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Supreme Court of the United States.

In re DAVID A. SACHS.

TRANSCRIPT OF EVIDENCE.

P. C. BUNNEMACHER PRESS, LOUISVILLE, KY.

EXHIBIT X.

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IN THE

District Court of the United States

FOR THE DISTRICT OF INDIANA.

In the matter of M. Zier & Company, against whom a petition in bankruptcy has been filed.

UNITED STATES, vs. W. W. WATTS, AND D. A. SACHS.	Citation for Contempt.

Frederick D. Connor, a witness called on behalf of the government, being duly sworn, and examined by Mr. LaFollette, testified as follows:

Q. You may state your name to the Court.

By Mr. Smith: In order to save the question that Judge Miller spoke of, we desire to object. We understand your Honor has ruled on the question, but we want to save the question as to the introduction of any evidence after the filing of the response; in other words, upon the idea that the response has purged the contempt.

By Mr. LaFollette: I do not think it is necessary to argue that proposition.

Mr. Miller: We do not want to argue it.

The Court: You are objecting to the introduction of any evidence.

Mr. Smith: Yes, sir.

The Court: The objection is overruled.

Mr. Fairleigh: We want our exception reserved.

By Mr. LaFollette:

Q. Where do you reside?

A. My name is Frederick D. Connor; I live in New Albany, Indiana, Floyd County.

Q. You may state to the Court whether or not you are acquainted with M. Zier & Company—whether you know of that firm?

A. I am acquainted with them.

Q. Where was it doing business within the past year?

A. On the corner of Oak and Pearl Streets in the City of New Albany, Indiana.

Q. You may state if you were appointed a receiver of that concern by virtue of certain bankruptcy proceedings that were instituted in the District Court of this District?

A. I was.

Q. You may state about what time, if you remember, you received your evidence of appointment?

A. I think I received it on the twelfth day of February. I was appointed on the 11th and I got it the following day, I think.

Q. At the time that you were appointed, you may tell the Court who was in possession of the property of M. Zier & Co.?

A. The New Albany Trust Company as receiver under the Floyd Circuit Court.

Q. What steps if any did you take to get possession of the property?

A. About the time I received the order appointing me I also received a note from the clerk to defer any action until a hearing was had on the following Monday.

Q. Were you here on the following Monday?

A. No, sir.

Q. You may go on and tell what you did?

A. After that hearing, I think on the 19th of February, I received a copy of my original order of appointment, with instructions to proceed to the Trust Company and demand that the property be turned over to me. Subsequent to that, however, I had a notice that some arrangement had been made here by which they would turn the property over to me on the 15th or 16th—the 16th I think it was.

Q. You may state whether or not you had prior to that time filed a petition in the Circuit Court of Floyd County to have the property turned over to you?

A. I had.

Q. You had filed that?

A. Yes, sir.

Q. Was that prior to the arrangement made to have a further argument of the question here in this Court?

A. I think it was.

Q. Do you know what was done on your petition?

A. No, I do not. I do not think any action was taken on it. I did not get any order.

Q. You did not get any notice of any action?

A. No, sir.

Q. After that, you may go on and tell what you did about making demand on the Trust Company and whom you saw and what you saw?

A. On the 19th of February about nine o'clock in the morning, I think, I went to the Trust Company's office and presented a copy of my original order that I received from this Court, from the clerk, to the Secretary of the Trust Company, Fred. Sauer, and demanded the property. He stated that the Vice-President, Mr. Jewett, was not present, but would be in shortly and that he would act upon the matter. I waited there sometime and Mr. Jewett came in and I demanded of him the property, and he handed me a document he had received, a petition that he had made to the Floyd Circuit Court and on that a written statement to me, asking me if I could not delay the matter, that he had laid it before the Judge and the Judge had said orally, that he would like for him to hold it in his hands that he would like for him to hold it in his hands until he could render his account to that Court, which they would make out othe next day or shortly, but if I insisted, that he would turn it, the property, over to me as he had agreed to do in this Court. I insisted and he turned it over to me—gave me the keys.

Q. What he gave you there was the keys to the plant?

A. Yes, sir, the keys to the plant.

Q. If you know, what did that give you access to?

A. That gave me access to the building, the enclosure out there, the property of the plant, and the office books and safe, that was all.

Q. That was all that was turned over to you there at the Trust Company office?

A. Yes, sir.

Q. Just the keys to the plant?

A. Yes, sir.

Q. About what time in the day was that?

A. That was about half past ten in the moring.

Q. Of what day?

A. 19th.

Q. Do you remember what day of the week that was?

A. I think it was on Thursday.

Q. What did you do after receiving the keys about going to the place and going into the plant, if anything?

A. I took a gentleman named Norton, Mr. Joseph Norton, up there and put him in charge of it as custodian, unlocked the place and took him in and gave him the keys to the front door and told him to take charge of it for me.

Q. That was on Thursday forenoon, you think?

A. Yes, sir.

Q. During that day did your man that you put in charge remain at the place?

A. Yes, sir.

Q. Were you about there at any time during the day after Mr. Norton went in charge?

A. About four o'clock in the afternoon of that day, I took another man out there and put him in charge, that is took him inside and told him his duty and gave him the keys to take charge of it as night watchman.

Q. You arranged for a custodian both in the day time and at night?

A. Yes, sir.

Q. You may state whether or not you had any conversation during the time that the property was in your custody with either Mr. Sacks or Mr. Watts, the attorneys?

A. I did not.

Q. You did not have any talk with them?

A. I did not.

Q. Was Court in session, if you know, during that time, the Floyd Circuit Court?

A. I don't think it was—I am not sure about it.

Q. You may tell the Court, what, if anything, occurred in the way of any notices or writs of any kind being served upon you while you were in possession of the property?

A. About seven o'clock on Friday evening Mr. Kelso came to my house and I admitted him and took him back into the sitting room and he stated that he had come to notify me that he was appointed Receiver by the Floyd Circuit Court in place of the New Albany Trust Company and therefore demanded the surrender of the property of M. Zier & Co. and I refused to surrender or turn it over to him.

Q. You say that was about seven o'clock in the evening?

A. Yes, sir. He said, "very well, you obey your Court and I will obey mine." That is the substance of what he said.

By the Court:

Q. Who said that?

A. Mr. Kelso.

By Mr. LaFollette:

Q. Was that at your house?

A. Yes, sir.

Q. Did you go out of your house during that evening—

A. No, sir.

Q. —or did you remain at home?

A. I remained at home.

Q. Was there anything further occurred during the evening with reference to this property?

A. About eight o'clock, between eight and half past eight, the door-bell rang and I went there and found the sheriff, Mr. Raymond Morris, and the deputy sheriff, Mr. Claud Sitason. I admitted them into the hall and the sheriff proceeded to

read a writ to me, I suppose it was, he read the order and then read the demand that I turn the property over to him as sheriff; and he gave me the copies of those that are in the files.

Q. What did you do about turning over the property?

A. I refused to turn it over to him. He said very well, I will go and take charge of it and turn it over to Mr. Kelso, the Receiver.

Q. Did you go out with him?

A. No, sir.

Q. After giving you that notice, he and the deputy went away?

A. Yes, sir.

Q. Did you have any further notice or know anything about the property during that evening or night?

A. No, sir—well, I think my watchman notified me that they had come there and taken charge of it, put him out.

Q. You learned that from your watchman?

A. Yes, sir.

Q. When did you next go to take the property after that night?

A. I went back to it after I had been up here to Court.

Q. You may tell how long it was held, if at all, by the sheriff, or by Mr. Kelso, if you know?

A. I presume—I understood he turned it over to Mr. Kelso that night. And Mr. Kelso held it until the Monday following, the Sunday night or Monday. He was cited to appear at this Court.

Q. It was after that that you got the property back again?

A. Yes, sir; after the hearing in this Court I got the property back again. I got it on the next Saturday night following.

Q. You may state whether or not there were any proceedings in the Court on the days following the appearance of the sheriff at your house, that you know of?

A. I could not say exactly; I saw a number of gentlemen going into the Courthouse in different places there.

Q. Did you yourself have any talk with the Judge of the court or with any of the attorneys about the matter?

A. I think not.

Q. You may state whether or not Mr. Sachs and Mr. Watts, the two attorneys charged here, were at New Albany on Friday or Saturday, following the time the property was taken from you, if you know?

A. I saw them there on the Sunday following and the Monday, I think. I saw them on Monday following anyway, and I think on Sunday too.

Q. Did you know personally of the proceedings that were instituted to secure the writ that was given to the sheriff to take the property from you?

A. No, sir.

Q. You did not know about that?

A. No, sir.

Q. Did you have any talk with Henry Jewett after the morning when he gave you the keys?

A. No, sir; I believe not.

Q. Was there any of the funds belonging to the firm of M. Zier & Co., turned over to you, moneys or credits, or anything of that kind?

A. Not at that time.

Q. There was no conversation about that at that time, was there?

A. No, sir.

By the Court:

Q. When did you get possession of the books of this firm?

A. I did not get possession of the books and safe until after I came back from this Court, after Mr. Kelso had abandoned the property.

Q. Did you examine the books?

A. Yes, sir.

Q. Do you know when the receivership suit was commenced in the State Court—do you remember the date?

A. I think it was the 30th day of December.

Q. Did you examine the books to ascertain whether or not any payments were made by the alleged bankrupt about that time?

A. Yes, sir.

Q. What did you ascertain about that?

A. I found, I think, on the 29th of December, $3100 was paid to Ryerson & Sons—that is, orders on another company, the New River Lumber Co. that owed Zier. He gave Ryerson & Son orders, I think, for about $3100. or something.

Q. Who were Ryerson & Son—what if anything did they have to do with the receivership?

A. I do not know; they are some kind of iron dealers in Chicago.

Q. They were plaintiffs, were they not, in the suit in the Floyd Circuit Court?

A. That I don't know except what I saw in the papers.

Q. What else did you find was paid out about that time, if anything?

A. I found on the 30th of December, an entry in the Journal that M. Zier paid C. L. & H. E. Jewett $600 as attorneys' fees and expenses for M. Zier & Co.

Q. What was the date of that payment as shown by the books.

A. The 30th day of December.

Q. What further payment did you find had been made on that date?

A. I found where they had paid C. L. & H. E. Jewett $9000. to be delivered to Minnie M. Zier, sister-in-law of M. Zier, the principal in this company.

Q. Did you discover who paid that money to the Jewetts, that $9000.

A. I think it was M. Zier.

Q. Did you discover where M. Zier got the money and how?

A. I discovered from the books.

Q. What did you discover?

A. From the cash book Mr. Zier drew $400. on the 21st day of October, cash from the bank and charged to Expense.

Q. Did you find the orders by which he drew the money out of the corporation?

A. I found the check.

Q. How was it done, by padding the pay-rolls?

A. That first item of $400 was charged to Expense. And afterwards in another handwriting written over it, was "this money was paid to Minnie M. Zier by M. Zier on account." That entry was made in a different handwriting in different ink. Then I found on the 28th that he drew some $1800 charged to payroll and the payroll was $824. The whole amount was charged to payroll and there was an entry over that in another handwriting, saying, "$1000 of this was paid to Minnie M. Zier by M. Zier on account." And I found on every pay day following that up to the 20th of December, that he drew $1000. more than the amount of the payroll with that same kind of entry interlined in the books.

By Mr. LaFollette:

Q. How was that?

A. I said every pay day after the 28th of October he drew $1000. more than the pay roll.

Q. How frequently were the pay days?

A. Every week; every Saturday, I think it was. The total sum of those overpayments or overdrafts was $8600.

Q. Is that an additional sum of money other than the $9000 you referred to?

A. No, sir; that is the same $9600. I have here the checks.

Q. The dollars $9600 stated before, $9000 in one item $600 in another?

A. Yes, sir; these checks show they were drawn for the payroll and they are charged on the books to payroll.

Q. The way the $9000 or the $9600 in fact, was taken out of the concern was by its appearing on the books that it was $1800 each payroll?

A. Yes, sir.

Q. When as a matter of fact the payroll itself was $800 and the $1000 additional to be sent to Minnie M. Zier?

A. That was all charged to payroll by the bookkeeper originally and subsequently someone had written over the items, "$1000 of this amount was paid to Minnie M. Zier by M. Zier on account."

Q. Do you know, or have you learned when that entry was made on the books showing that part of it was paid to Minnie Zier and who entered it?

A. The bookkeeper was Harry Ury; he made the original entry and the subsequent entries or interlineations, I do not know who made them. The sum seems to have been charged on the books on the 30th of December, exactly $9600., but these accumulations came in that way from the 21st of October to the 30th of December.

Q. One of these checks is for only $400?

A. That is the first one he drew and that he charged to expense without any itemized statement.

Q. Was there any additional entry made in regard to that or did it still stand on the books as charged to expense?

A. He added to that same amount that "this amount was paid to Minnie M. Zier by M. Zier on account."

Q. On October 25th the check was for $1827.?

A. That is $1000 over the payroll.

Q. The next one is dated November 1st, and is $1931?

A. That is $1000 more than the payroll.

Q. The next one is dated November the 7th and is $1819? Was that $1000 in excess of the payroll?

A. Yes, sir.

Q. The next one is dated November 15th, $1855?

A. That was $1000 more than the payroll.

Q. And the same entry in regard to it.

A. The same entry all along.

Q. And then each of those subsequent ordersfollowing Nov. 22, Nov. 29, Dec. 6, Dec. 13, Dec. 20—

A. Just a week apart.

Q. And Dec. 28th—

A. No, it stops—

Q. —on December 20th. Yes, with December 20th. And here is another item dated Oct. 28th, a check from $400.

A. Yes that was charged to expense.

Q. That was the same as October 21st?

A. Yes sir.

Q. Charged to expense, but afterwards an entry saying it was paid to Minnie Zier?

A. Yes sir.

By Mr. Miller;

Q. This $9600, is that the entire sum that was paid out, or is that in addition to what was paid Mr. Jewett?

By Mr. LaFollette: It includes the amount, am I right?

The Court: $9600 was paid at the time, $600 for their attorneys fees and $9000 to hand to Minnie Zier, of Minneapolis. The $9600 is charged,—

Mr. Miller: Is that the total?

The Court: And this testimony just given shows how Zier abstracted that money from the funds of the company.

Mr. LaFollette: I think that these checks that have been identified by Mr. Connor and explained by him should go in evidence.

The Court: They can go in evidence, but they must be preserved hereafter and if they go into the record they must go by copy; those things are things that the court will require hereafter.

Mr. LaFollette: Possibly they are referred to explicitly enough by the evidence and in view of that fact probably Mr. Connor had better keep them.

Q. Referring to this matter of the books, since it has been suggested I want to ask you I believe you state that up to the time the property had been taken from you by the sheriff you had not yet had the books?

A. No sir.

Q. Tell the court why you had not?

A. On the morning of the 19th when I got the keys to this plant from Mr. Jewett, Mr. Zier came into the Trust Company and I asked him if he would unlock the safe for me so that I could get possession of the books. And he declined to answer. I asked him another question or two about a car load of stuff that was there about switching on to his track, and he would not answer that and I went over and sat down by the desk with him and I told him this was a matter—

Mr. Miller: I do not want to be objecting, but unless the District Attorney will say that he expects to connect our client with Mr. Zier, I do not think this evidence is competent.

The Court: I do not think the conversation between this witness and Mr. Zier is competent, but I do think that the fact that this witness is receiver of this court and as receiver demanded that he be given the books and papers of this corporation and refused and the fact that subsequent to that time the books and papers were given in custody of another party and after that the books were found to be interlined, those facts are competent.

Mr. Miller: They are not competent as to us, unless we are conne ted with it.

The Court: Certainly your client will not be responsible unless connected with it.

Mr. Miller: Ordinarily the rule is to require the district attorney to say that he expects to connect the defendant.

The Court: He has said that in his information.

Mr. Miller: He does not say so. He charged us with simply resisting the execution of an order and taking property from the hands of a receiver.

The Court: However that may be, I will say now, of course, Mr. Sachs and Mr. Watts will not be held unless the evidence connects them with this unlawful conspiracy which was carried out against this property in the possession of the receiver.

Mr. Miller: He don't even charge us with conspiracy.

The Court: I do.

Mr. Miller: He don't.

The Court: The only question here is are the defendant's counsel right in their point, whether or not these defendants took part in this unlawful wresting of this property from the hands of the receiver of this court. That is the question here. Unless they are shown to have aided, abetted, counseled, or encouraged or some way engaged in it, they are not responsible for it, but if they did aid, counsel, abet, or encourage, they are responsible just as much as those who did it.

Mr. LaFollette: And the reason I asked these other questions—I don't care about the conversation, I simply want the incidents and the various steps as we proceed with the matter.

The Court: And the court rules that the circumstances are competent.

Q. You may state whether or not in response to the question you asked about the opening of the safe, whether it was open?

A. It was not.

Q. You may state whether or not during the time you had possession of the property, Thursday and up to Friday night, you had during that time been able to have the safe opened and examine the books of M. Zier & Company?

A. I had not.

Q. You may state whether or not there were any papers in the desk in the office of the company or whether you had a key to the desk?

A. I think I found the keys to the desk in the safe after it was opened some time after Mr. Kelso had it.

Q. You may state whether or not you were able by virtue of any desks or places that you did have access to

find any record of the proceedings or business methods of the concern?

A. I was not.

Q. You may state whether or not, if you know, there were any books taken away from the plant during the time that the property was out of your hands until it came back to you again?

A. I could not tell that only from the testimony I heard in court here.

Q. You do not know personally?

A. No sir.

Q. Except that you learned that some papers were taken away?

A. No sir.

Q. Do you know whether the books were taken away from the safe during that time?

A. I could not tell you.

Q. You have not the books here with you?

A. No sir.

Q. When you got the property back was after you had been up here and probably a week had elapsed and then you had the safe opened?

A. Mr. Zier opened it for me after we went back from the court.

Q. That was the first time you had access to the safe?

A. Yes sir.

Q. Was that the first time you had seen the books?

A. Yes sir.

Q. You may state whether or not it was after that that you got those checks you have here?

A. Yes sir it was since that time that I got these checks.

Q. Who gave them to you?

A. I found them myself.

Q. Where were they?

A. They were in an old box in the vault, an old vault, back in the corner of the office.

Q. Where were the books when you got the safe open? Where did you find them?

A. They were in the safe.

Q. How many books were there in which the accounts of the concern had been kept and what system of book-keeping did they have?

A. They had a cash book and a journal or day book journal. I dont think they kept a regular day book and a patent ledger, that is, a locked back to take sheets out and put them in as the case required.

Mr. Miller: It seems to me that this is too remote to have any bearing on this question here. The district attorney

may be trying to find evidence against somebody else, but it does not seem to me that this competent against us.

The Court: What was the last question?

Mr. Miller: It was as to the method of bookkeeping of M. Zier & Co.

The Court: Has he answered the question?

The Reporter: Yes sir.

The Court: There don't seem to be anything to rule on now.

Q. You may state to the court whether or not since you have taken possession of the concern since you were up here before this amount of money which was transferred from the concern, by these excessive vouchers or checks have been repaid to you as receiver of the concern?

Mr. Miller: I believe for the purpose of cutting this short, I will object to that; I do not see how that can affect my client.

The Court: I will overrule the objection. I do not know what the purpose is.

Q. This $9600, has it been paid to you?

A. I received from Col. Charles L. Jewett $534.84 of the $600 that he got of that money for fees and expenses but the balance of it I have not received.

Mr. Fairleigh: We move to strike out all of this evidence as to preferential payments made anterior to these proceedings. I do it in this form to save time.

The Court: Overruled.

Mr. Fairleigh: Give us an exception.

Henry E. Jewett, a witness called for the government, being duly sworn, and examined by Mr. LaFollette:

Q. State your name to the Court?

A. Henry E. Jewett.

Q. You reside at New Albany?

A. Yes sir.

Q. Are you connected with the New Albany Trust Company?

A. Yes sir, vice president.

Q. Did you have active management of the company during the time that it was receiver for M. Zier & Co.?

A. Yes sir, I assisted in the management of the company.

Q. You are acquainted with Michael Zier?

A. Yes sir; I have known him probably ten or fifteen years.

Q. And the "company." Did you know what was known as M. Zier & Co.?

A. Yes sir.

Q. Do you know who constituted the firm besides Michael Zier?

A. Do you mean before the incorporation?

Q. It is an incorporated company, now?

A. Yes sir.

Q. Do you know who the stockholders are,—are there many of them?

A. I think there are only four, Michael Zier, and his brother, now dead, Edward Zier, Minnie Zier, the wife of Edward Zier, and H. E. Urey, I do not know whether his name is Harry or Henry. He goes by the name of Harry; it is H. E. Urey.

Q. Minnie Zier is the widow of Edward Zier who was one of the stockholders in the M. Zier and Company concern?

A. Yes sir.

By the Court:

Q. Her husband was a stockholder?

A. Yes sir.

Q. And she is now a stockholder?

A. I think both were stockholders at the same time.

Q. Was she a stockholder before her husband's death in her own right?

A. I am only stating my understanding, but I understood both became stockholders in the corporation at the same time.

Q. Do you know whether or not she succeeeded to the shares her husband owned in his life time?

A. I do not know.

By Mr. LaFollette:

Q. Did you have any personal knowledge of the management of the business of M. Zier & Co. before its failure or before suit was brought in the Floyd County Circuit Court appointing a receiver?

A. None except in some legal business they had; as that I had been consulted by Mr. Urey the secretary, such as claims they had, liens.

Q. You are acquainted with the defendants here, Mr. Sacks and Mr. Watts?

A. Yes sir I have known Mr. Watts a number of years and I have known Mr. Sachs a short time.

Q. How long have you known Mr. Sachs?

A. I do not remember to have met Mr. Sachs until he came to New Albany after Mr. Watts had been to Indianapolis on the hearing on the 16th. I may have met him before but I have no recollection of it.

Q. How long have you known William W. Watts?

A. Probably ten years.

Q. Had he been practicing in the New Albany Circuit Court?

A. Not to my knowledge, but he had a collection business, a commercial law business in Louisville, and I had had some business with him in that way.

Q. Did you know personally of the institution of the proceedings of Ryerson & Son against M. Zier & Co.?

A. Yes sir, I appeared in that action.

Q. In what capacity did you appear?

A. I appeared as attorney for M. Zier & Co.

Q. You may state to the court whether or not you had had any conversation with W. W. Watts prior to the commencement of that action?

A. Yes sir I had.

Q. About how long before the action was instituted did you talk with Mr. Watts?

A. The morning it was filed.

Q. Just that morning?

A. Yes sir.

Q. What time in the day was it filed?

A. In the afternoon.

Q. You may state to the court, if you know, whether or not the petition that was filed in the Circuit Court by Ryerson & Son was prepared before you had the talk in the morning with Mr. Watts or whether it was prepared after the conversation.?

A. No it was prepared afterwards, I am sure; because Mr. Watts said he would prepare it and file it.

Mr. Miller:

Q. Did he say it was prepared afterwards?

A. I feel confident it was. I cannot say I saw it prepared.

Q. You may state to the court whether or not you had talked to Michael Zier, representing M. Zier & Co., before you had the conference with Mr. Watts about his financial condition?

A. Yes sir.

Q. How long before.

A. It had been several days; I do not remember just how long.

Q. You may state if you learned in your interview with him that he was insolvent?

A. I understood he was not able to pay everybody and was at least threatened with insolvency.

Q. And what was said by Mr. Watts in reference to it at the time you had the conference on that day?

A. I could not remember what was said as to his insolvency. Mr. Watts had this claim.

Q. How much was the claim, do you know?

A. About $15,000.

Q. Do you know then that there had been a recent payment on it?

A. No sir, I knew knowing of those payments to Ryerson.

Q. You did know about them? Had not Zier ever said anything to you about what payments he had made to Ryersson?

A. No sir, not to my recollection; I don't think I had ever heard of that.

Q. Was the proceedings instituted the result of an agreement or understanding between you and Mr. Watts, you representing M. Zier & Co. and he representing Ryerson & Co., that the proceedings should be instituted and that they should take the course that they did? Had that all been canvassed before the papers were filed?

A. Yes sir, I understood Mr. Watts would file a suit and apply for a receiver and that we would appear for Zier and consent to the receiver being appointed.

Q. Were you to do that without the issue of any process?

A. I do not think there was anything said about that. The process was issued; that was my understanding.

Q. There was not any ten days' time taken?

A. No sir, it was issued and served and appearance entered at the same time.

Q. So that the proceeding was instituted and apearance entered to it and action taken on it by the court the same day?

A. The same day.

Q. And that had been agreed upon in the morning when the statement had been made by Mr. Watts that he would prepare the petition?

A. Yes sir; we agreed to consent that the receiver should be appointed.

Q. Had you at that time a list of the creditors of M. Zier & Co.?

A. I had not.

Q. Do you know whether or not Mr. Watts had?

A. No sir, I don't know whether he did; I don't think he did.

Q. You may state whether or not you had any talk with the judge of the court prior to the filing of the petition?

A. I do not know that I did; I may have said a word that I would have some proceedings in his court; that is the rule we had there; the court was not in session.

Q. It was during term time?

A. No sir, the receiver was appointed in vacation, and that is the reason I sent word to the judge or telephoned that

there would be some proceedings taken in his court. I am sure I did not say what it was.

Q. It was during vacation that the action was taken?

A. Yes, sir.

Q. Had you talked with Mr. Watts about having the Trust Company appointed receiver?

A. Yes sir, I think I made that suggestion myself; I was interested in the Trust Company and naturally would.

Q. Had you known at that time about the payments that had been made to your firm by M. Zier and Company for Minnie Zier?

A. Yes sir I knew of that payment.

Q. Did you talk with Mr. Watts about that?

A. No sir.

Q. Do you know whether or not by anything he stated to you, whether he knew of the payments that had been to Minnie Zier by the Company?

A. No sir, I don't there was anything said about it in any conversation we had.

By the Court:

Q. You don't think, do you know?

A. That is my recollection, that there was nothing said about Minnie Zier at all in our conversation.

Q. The payment had just been made? that day or a day or two before?

A. Yes sir.

Q. Did he come there to consult you about the receivership about placing the company in the hands of a receiver?

A. No sir; the agent of Ryerson was with Mr. Watts; they had determined on the receivership as I understood it before I saw them or that some proceedings had to be taken.

Q. Did you know at the time or times that these payments were made, the manner in which the entries were made on the books of M. Zier & Co. as to how the money was taken from the concern?

A. No sir, I had never seen the books of M. Zier & Co. I did not know anything about how the payments were made.

Q. Did the bookkeeper of the concern ever consult you about the method of making entries in their books?

A. The day the receiver was appointed, those entries were made on that day and I knew the entry on the journal of the payment of this money; it was paid some days before that; I knew of that payment.

Q. Do you mean the entry that was made for the whole $9600?

A. For the whole $9600.

Q. That entry was made immediately preceding the appointment of the receiver in the Circuit Court about that day or the day before?

A. No sir; it was made the day the receiver was appointed. I think the day the receiver was appointed.

Q. Did you learn then when that entry was made of the $9600, as to how the entries had been mad on the books from time to time as the moneys were paid each week?

A. I am not positive that I saw that entry; I learned if my recollection is right that that money had been charged to Mr. Zier as treasurer, that there was an account on the ledger, M. Zier, treasurer, and that this money as it had been paid over to him had been charged each time had been charged to M. Zier, treasurer.

Q. Did you learn then that it had been entered on the books as a charge to the pay roll, that it appeared that it was a pay roll charge?

A. No sir; I never knew that until Mr. Connor showed me the checks on Sunday.

Q. Since he got possession of the books?

A. Yes sir.

Q. You never knew it before?

A. I never knew it until that day.

Q. Did you know or have you learned how the entries came to be made in the books showing the $1,000 of this amount each week was paid to Minnie Zier when it had been originally charged up to the payroll?

A. I do not know anything about that?

Mr. Miller: I want to object to that.

The Court: He has answered that he don't know anything about it.

Mr. Miller: I know that, but he is taking up time; he certainly don't expect to prove that our client had any knowledge of the manner of bookkeeping of M. Zier & Company. He is doing this for some other purpose. I do not object to the purpose, only that he is taking our time in doing it.

The Court: I think myself that these matters are competent; it is hardly necessary for me to tell the reason why just now. I will say, however, that the question, as I understand it, for this court to try is this: There is no question that the receiver of this court went down and took possession of this property and took it away from the possession of the receiver of this court. This court holds that there is no question that that is illegal, and the question is what connection had these defendants with that proceeding. Now I propose to allow the district attorney to show what kind of a proceeding that was; the circumstances surrounding it and any citation or any transaction which might account for this marvelous effort on the part of the people to retain possession of the books of this company after the receiver of this court had made such an energetic effort to get hold of them.

Mr. Miller: In other words, the Court will allow as against these parties, without any statement by the district attorney that he expects to connect them with it, these matters to be put in as evidence against Mr. Sachs, for instance, the manner in which the books of this concern were kept, and what Mr. Jewett knew about that fact, a month or two months before Mr. Sachs ever had any connection with it.

The Court: It may be a month or so before Mr. Sachs had anything to do with it, but Mr. Watts had to do with it all the time. Mr. Watts brought the suit. He was the adviser of the Trust Company who had charge of the books when these interlineations appear to have been made, and the evidence I think is competent.

These defendants when they come to present their case and claim that they acted innocently in this entire transaction—I am going to find out if I can whether they have.

Court here adjourned until to-morrow morning at nine o'clock.

TUESDAY, MARCH 10th, 1903.

MORNING SESSION.

The court met at nine o'clock. Present the same as on yesterday.

The direct examination of the witness, Henry E. Jewett, was resumed as follows, questions by Mr. LaFollette:

Q. You said that you didn't know about how the entries were made in the books of M. Zier & Company as to the method of payments to Minnie Zier, from the first entry of its appearing as a payroll?

A. No, I know nothing about that. I don't believe I ever saw the original entry.

Q. You have seen it since then?

A. No sir.

Q. Haven't you seen the books since Conner got possession of them?

A. No.

Q. You have never seen the entry—the original entry?

A. I don't remember of seeing the original. My impression is I did not.

Q. Were the checks that were drawn by M. Zier & Company paid through the trust company or through the bank?

A. Through the bank.

Q. You had nothing to do with that?

A. Not before the receivership. We had nothing to do with M. Zier & Company's affairs before the receivership.

Q. Well, did you know, prior to the institution of the proceedings by Ryerson & Son that the payments were

being made by M. Zier & Company to Minnie Zier, of $9,000, and to Ryerson & Son, of $3,100.

A. I didn't know about the payment to Ryerson. I knew that payments had been made to Minnie Zier.

Q. You may tell the Court how the payments were, handled, they being made each week to you of $1,000, or to your firm—did you deposit that money each week or remit it?

A. They were not paid to our firm each week. The money was paid to us practically all at one time; possibly on two days; I haven't got the dates, but just before the payment to Minnie Zier. The money was brought to us altogether.

Q. Well, did you know what Mr. Zier did with the one thousand dollars that he retained each week?

A. No, I did not.

Q. It was not paid to you in weekly payments, then?

A. No.

By the Court:

Q. You say it was paid to you in one or two payments?

A. Yes, sir, about all the same time.

Q. Well, which one or two payments?

A. Two payments.

Q. How was it divided?

A. Well, it was all paid except $2,100, I think the first day; and the next day, or the day after, Mr. Zier brought the other $2,100; that is the way I remember it.

By Mr. LaFollette:

Q. And how soon after it was paid to you was it remitted, if it was remitted at all by your firm, or was it deposited at New Albany?

A. It was deposited at New Albany in our account in bank, like any other account that was received, and my brother took the check to Mrs. Zier and paid it.

By the Court:

Q. Where?

A. Chicago.

By Mr. LaFollette:

Q. Was the check delivered, as you understand it, in Chicago?

A. That is my understanding.

Q. You understand that from the fact that he went to Chicago about the time that it was taken out of bank?

A. I was not managing that part of it; I really know that—

Q. (Interrupting.) How long was that before the institution of the proceedings in the State Court by Ryerson & Son?

A. It was just a few days. Probably the 26th or 27th of December.

Q. You may state if Ryerson & Son or their agent or any one representing that company came to New Albany immediately after that payment had been made up in Chicago to the agent of Minnie Zier?

A. The agent of Ryerson & Son, Mr. Jackson, came on the 30th of December.

Q. When he came did Mr. Watts come with him?

A. Yes sir they came, but I saw them before they came to New Albany, as Mr. Watts telephoned me Mr. Jackson was at his office and called me to Louisville; that is where he asked me about appearing to Mr. Zier in the receivership.

Q. When you first met them it was in Louisville?

A. Yes sir.

Q. In response to a telephone communication from Mr. Watts?

A. Yes sir.

By the Court:

Q. When was that?

A. That was the 30th; the day the receivership was filed.

By Mr. LaFollette:

Q. That was the same day it was filed that you went over to Louisville in the morning was it?

A. In the morning.

Q. Of that day?

A. Yes.

Q. In that conversation was there anything said about this payment that had recently been made by Zier & Company to Minnie Zier?

A. No sir, there was nothing said about that.

Q. Was there anything said about payments having recently been made to Ryerson & Son of $3100?

A. Not to my recollection; I would say there was not; what I was called over for I understood was to see whether I would appear for Zier in a receivership suit?

Q. Was the form of suit talked about between you and Mr. Watts at that time? Did you talk about any other kind of proceeding than the one you brought?

A. No, my understanding was that the determination had been arrived at to bring a suit for a receiver in the state court.

Q. What was said that induced you to reach that inference that it had been decided on?

A. Well that is hard to say. I just know there was nothing else said.

Q. Wasn't there any talk had between you and Mr. Watts about the probabilities of there being bankruptcy proceedings?

A. Not at that time.

Q. Well was there then at any time?

A. I don't know that there was unless it was after this receivership here.

Q. I mean before then?

A. No, I had no discussion with Mr. Watts about the bankruptcy matter. I want to say in explanation of my not discussing the matter further with him, you understand my brother had seen the Ryersons and I knew that, and I did not consider it any part of my duty to do so.

Q. So the matter of the kind of suit had been talked about before, you think?

A. I supposed it had. Yes sir.

By the Court:

Q. Well when you agreed to appear for M. Zier & Company, and have the receiver appointed, you knew then that your brother had been to Chicago to deliver to the agent of Minnie Zier this $9,000, didn't you?

A. Yes, sir.

Q. He was absent on that mission, was he not?

A. He had been at Chicago, and I don't think was in Chicago at that date.

Q. He had not yet returned to New Albany?

A. No, he had not.

By Mr. LaFolette:

Q. Was there anything said by Mr. Jackson, the agent of Ryerson & Son, about his conference with Mr. Jewett, your brother?

A. He spoke of meeting him there.

Q. Did he say anything about the fact that there was to be a suit brought as the result of that conference, and that he had learned from your brother, Colonel Jewett, that you both would appear for M. Zier & Company?

A. That was my understanding, that he knew that when he came that the property was to be put in the hands of a receiver of the State Court.

Q. Well, now wasn't there at that meeting some conversation between you, as lawyers, about the possibility or probability of some other creditors coming in and instituting bankruptcy proceedings, if you commenced this proceeding?

A. I don't know that there was; if there was I don't remember it; I wasn't there only a short time; as I say, I had not made the arrangement.

Q. Do you know why you went over there then?

A. I was informed Mr. Jackson was there?

Q. I know, but you had talked over the telephone you say? that is you had a communication from Mr. Watts by phone to you?

A. Yes.

Q. Now if it had only been a matter of asking you whether you would appear for M. Zier & Company that could have been answered over the phone couldn't?

A. That could have been answered over the phone.

Q. Do you know why it was not?

A. No, except that Mr. Watts wanted to talk about this receivership matter.

Q. Well if as you say the matter had been determined before communicating with you, about the form of the suit, and you didn't talk about that because it had been so determined, and he only wanted to know whether you would appear for Zier, and that could he asked over the phone, now can you call to mind any reason why you went over to Louisville?

No, I went to Louisville because Mr. Watts called me up and said Mr. Jackson was there, and I understood that the receivership suit was to be brought; Mr. Watts talked with me about the form of the complaint, form of the proceeding under our statute for a receiver; and talked to me about who would be the receiver.

Q. Now as fully as you can you may relate all that was said by Mr. Watts to you, and you to him, in that conversation just as fully as you can, Mr. Jewett?

A. Well I could't undertake to repeat what was said.

By the Court:

Q. Well you must undertake to tell what was said.

A. I will do it as fully as I can. I was trying to go over in my mind what had occurred. The telephone message came tolerably soon after I got to my office at nine o'clock, and my recollection is Mr. Watts told me over the telephone —whoever telephoned, I don't know whether it was him or someone in his office; but my recollection is it was Mr. Watts; I remember his voice—that Mr. Jackson was there, and I told him I would come over, and I went. I got there probably in an hour, and Mr. Watts and Mr. Jackson were there, and he introduced me to Mr. Jackson, and Mr. Jackson spoke of meeting my brother in Chicago, he having been at the office of Ryerson & Son; and Mr. Jackson talked something about the liabilities and assets of the concern. Do you want me to tell what was said about that?

By Mr. LaFollette:

Q. Yes, what was said about that?

A. My recollection is that they had statements or copies of statements that Mr. Zier had given, and it showed his estimate of the assets at something over $50,000, and the liabilities about $65,000; my recollection of that statement was that the assets were either 55 or 58, thousand dollars; I didn't prepare that or work on it, and I don't remember accurately about it, and Mr. Jackson—

The Court: Speak louder.

The witness continuing: I was trying to remember whether he talked about the state receivership or not.

By the Court:

Q. Is he a lawyer?

A. I thought at the time he was, and I am not sure, Your Honor, whether he is or not; he is employed by these people, and I am not sure but he is a lawyer; but I think he has charge of their collections probably; and Mr. Watts asked me whether we had a statute about appointing a receiver for an insolvent corporation, and asked me about the form of the complaint and some details of that sort, and he asked me about who would be the receiver, who would be a proper party, and I suggested the New Albany Trust Company, and stated that I was interested in it, and he asked me about representing the receiver, and I told him that would be all right; that was the rule of the trust company.

By Mr. LaFollette:

Q. That is he desired to be the attorney for the receiver?

A. After it was appointed, Yes sir.

Q. He was also the attorney for Ryerson & Son, wasn't he?

A. Yes, he had their claim in his hands at that time as I understood.

Q. Did you and he talk together about the propriety of the attorney for the principal claimant, or at least one of them, being also the attorney for the receiver? Was that subject talked about?

A. No, nothing was said about it.

Q. So that matter wasn't mentioned at all, you think, about the propriety of it?

A. No; no, I am not sure of that.

Q. Did you talk with him when he asked you about the statute of Indiana in regard to the appointment of a receiver for insolvent corporations, and in a general way about insolvency, did you mention the fact that the statute provided for assignments, and did he say anything about that?

A. Well, if he did I don't remember it.

Q. Don't you remember that he said that what they wanted to do was to have a proceeding that would avoid if possible subsequent bankruptcy proceedings?

A. No, he didn't say that to me.

By the Court:

Q. What was the answer?

A. No, he said nothing of that kind to me.

By Mr. LaFollette:

Q. And you said nothing about assignments, about that statute, when he talked to you about the Indiana statute?

A. No, I understood him to say that they had agreed about the receivership.

By the Court:

Q. That who had agreed?

A. That my brother and the attorneys for Ryerson at Chicago.

Q. Was there anything said there about the steps that were to be taken following the appointment of a receiver?

A. Yes, we talked about operating the plant.

By Mr. LaFollette:

Q. You may state pretty fully what was said about that?

A. Well, the details about the operation were not gone into; it was merely stated that in the petition and in the order they would ask the court for an order to continue the operation of the plant.

Q. Had you talked with Judge Utz about it before going over to Louisville?

A. No, I never mentioned it to Judge Utz in any way.

Q. Then if the agreement had been made as you indicate it was, that a receiver should be prayed for, while your brother was in Chicago, in conference with Ryerson & Son, it is hardly likely that you would have been called over to say that you would appear? That also had been agreed on before.

A. I did not mean to indicate that it was whether I would agree to appear or not; it was about entering my appearance and having the suit filed.

Q. Really, it was a conference about methods to be followed?

A. About arranging for the suit.

By The Court:

Q. To carry out the agreement that was made in Chicago?

A. That was my understanding of it.

Q. Where did you get your information about it?

A. From my brother.

Q. Before he went to Chicago?

A. No, he informed me while he was in Chicago.

Q. By letter?

A. No he called me up over the telephone and told me he had seen Ryerson.

Q. Where was he when he called you by phone?

A. In Chicago.

Q. So you had a conference with him from New Albany to Chicago as to the plans that were adopted, and that you were to appear for M. Zier & Company and that there was to be a receivership?

A. And consent to a receivership.

Q. Had you in the meantime talked to Michael Zier about it, or did you at any time talk to him?

A. I talked to him after I had this message from my brother; I hadn't talked to Mr. Zier a great deal; in fact I hadn't had charge of a great deal of that business in our office up to this time when my brother went away, but when I heard from my brother I called Mr. Zier in and told him that Ryerson & Son were going to file an application for a receiver.

Q. What did he say about it?

A. He was satisfied, agreed that that was the best arrangement.

Q. He was leaving that to you? Did you tell him that your company would probably be the receiver?

A. I don't know that I did. My impression is I did not, because that was not a matter that Mr. Zier was concerned about.

Q. Did you learn from him that he had already talked to Col. Jewett about it before his going to Chicago, and that he was pretty fully advised about what was going to be done?

A. I knew that he had authorized my brother to make arrangements at Chicago with Ryerson to settle this business if he could; I knew that in a general way only by seeing him in the office.

Q. After the suit was filed did you have any active connection with it in appearing for Zier & Company as to the proceedings in court?

A. You mean after the first day?

Q. After this conversation you had at Louisville?

A. I appeared when the suit was filed.

Q. Following that did you have active connection with the various steps that were taken?

A. Not with the suit; at the time the creditors met I took no part in that except on behalf of the trust company; I did make some suggestions.

Q. Do you know how it came about that the creditors' meeting was had?

A. That was Mr. Watts's plan to have a creditors' meeting; he made that suggestion.

Q. When was that suggestion made and where?

A. My recollection is it was made at the time the order was entered or talked about.

Q. In court?

A. Yes or right soon afterward.

Q. Well was there any statement made to you or in your presence about why they should have a creditors' meeting? What the purpose if it was?

A. It was to have the advice of the creditors' in administering the estate.

Q. Was there anything said about getting them into court by that method?

A. Not to me.

Q. Was there anything said about calling them in and having them to agree that it should proceed in a general way on the plan of bankruptcy proceedings?

A. No I never heard that statement made until it was made in court up here; that was the first time I ever heard a suggestion of that kind made; on the hearing here?

Q. Didn't you hear it made at the creditors' meeting down at New Albany?

A. No I have no recollection of that.

By the Court:

Q. You heard the statement made down in chambers?

A. Down in chambers?

Q. Yes, you heard the statement made by the attorney?

A. Who was here at the meeting?

Q. Yes.

A. I heard Mr. Watts say at that hearing, yes, that the plan was on those lines.

Q. You heard Mr. Watts say that down in the chambers of this Court.

A. Yes, Your Honor, I heard what was said here.

Q. That that was his plan?

A. That was his plan; it was a plan on those lines, something of that kind; I couldn't repeat the statement of the words.

By Mr. LaFollette:

Q. At the time of the creditors' meeting I believe you said you were present and made some suggestions?

A. Yes sir.

Q. Was Mr. Watts present?

A. Mr. Watts was present.

Q. What subjects were talked of there at the creditors' meeting?

A. Well there were a number of controversies over unfinished contracts, some persons claiming that work had been paid for and not delivered and that they were entitled to have the boilers and the machinery delivered because they had paid for them; and there was some discussion as to whether it would be profitable to finish unfinished contracts and matters of that kind, were discussed.

Q. Was there anything said about payments that had been made? Was there anything said about the payments that had been made to Minnie Zier?

A. No, not that I remember of.

Q. Was there anything said about the $3,100 that was paid to Ryerson?

A. If it was mentioned I did'nt hear it.

By the Court:

Q. Was your brother in the creditors' meeting?

A. Yes, he was there.

Q. Did he say anything about having taken $9,000 to Chicago?

A. No sir?

Q. Did he tell about the $600 he received?

A. No.

Q. And Watts said nothing about the $3,100 that had been received by Ryerson & Son?

A. No sir.

Q. That was a meeting to advise with the creditors.

A. Yes it was called for that purpose as I understood it.

By Mr. LaFollette:

Q. And was court in session?

A. When the term was going on.

Q. That was during the term?

A. Yes sir.

Q. Was Judge Utz present?

A. Oh yes, he was presiding.

Q. Presiding at the creditor's meeting?

A. Yes.

Q. Well was it the court presiding?

A. Yes, it was the court presiding; there was an order entered that day for the operation of the plant; a petition filed.

Q. Well, do you know anything about the form of notice that went out to the creditors?

A. My recollection is it was a letter.

Q. It was a letter to them that it was to be a creditors' meeting?

A. Possibly it was.

Q. To consider the business of M. Zier & Company? There wasn't any notice to them that they were to come and be convened at a session of court, to go up against the Floyd circuit?

A. No, it was stated, I presume, that it was to be held in court. There was no summons or anything of that sort.

Q. Judge Utz presided, and the matter was discussed in open court?

A. Yes, with a large number of creditors.

Q. Did the creditors discuss the questions to the court?

A. Two or three creditors made suggestions to the court, I wouldn't be able to say just how many.

Q. And how soon after that, if you know, was the order made that the Court entered that day? Was it immediately done there?

A. That is my understanding.

Q. Did any of you, as attorneys, supervise the form of the order, either you or your brother or Watts?

A. Mr. Watts was preparing the order.

Q. During the meeting?

A. During the meeting; yes, sir.

Q. He prepared it there in the court room?

A. I wouldn't say he prepared all of it; he was working on it; I saw him there.

Q. Was that entry that he prepared submitted to the creditors at that meeting so that they might know what kind of an order was going to be spread upon the record?

A. It was submitted to some of them; I couldn't say that it was submitted to all. My recollection is that it was not read publicly while I was there.

Q. You think it was not publicly read to the meeting?

A. I don't think it was; at least I didn't hear it; I was out of the room part of the time.

Q. How long did the meeting continue?

A. Oh, I think most of the day.

Q. Did you have an adjournment and then go back again in an afternoon session?

A. I don't remember about that, but we were there a good while.

Q. Following that meeting, then—

By the Court:

Q. Before you leave that meeting, was there anything said in that meeting in the presence of these creditors about enjoining the creditors from prosecuting their suits in any other court?

A. That was in the entry as I understood it.

Q. I didn't ask what was in the entry; I asked was there anything said about that in that meeting?

A. I heard Mr. Stotsenburg say that that ought to go in the entry, but that wasn't said to the meeting generally.

Q. Then it was not stated to the creditors?

A. I didn't hear it stated.

Q. Was any such matter as that discussed in the creditors' meeting when the creditors were present—

A. I heard nothing of that sort.

Q. (Continuing) That there should be included in this entry an order or injunction of that sort?

A. Not while I was there.

By Mr. LaFollette:

Q. Now what further connection did you have with the matter as it proceeded after that meeting, and what do you personally know about what Mr. Watts did in that same connection?

A. Well I didn't have a great deal more to do with it except as an officer of the trust company, and not a great deal with that; I had something to do with claims where there was some trouble about them; I had some trouble with claims that were in dispute, and went to Louisville once with Mr. Zier to see about men who were getting work done, where they were not satisfied with work that was being done.

Q. Mr. Watts was the attorney for your company?

A. Yes sir.

Q. Did he advise with you from time to time as to the proceeding?

A. He advised with the secretary through the telephone, and came over to see him; at least I saw him over in the office, and my recollection is some of these matters that were in dispute were sent to him to be adjusted; I had no further active participation in it until he got the order to come up here and present the question of jurisdiction to this court.

Q. What was the date of the creditors' meeting that you had spoken of?

A. My recollection is the 24th of January.

Q. How soon after that was it, if you know, that a petition was filed in the bankrupt court?

A. I heard of that on Thursday before the Floyd circuit court adjourned; the Floyd circuit court adjourned on the 14th; on the Thursday preceding I heard this petition had been filed.

Q. Now after having heard that on the Thursday before the adjournment of court how soon did you see Mr. Watts?

A. I telephoned Mr. Watts the fact that that petition had been filed that day.

Q. On Thursday?

A. On Thursday.

The Court: What petition had been filed?

Mr. LaFollette: The petition in bankruptcy.

The witness: And the next day Mr. Watts came over, is my recollection.

Q. On Friday?

A. On Friday.

Q. Now was there anything done on Friday in court about the proceedings?

A. I don't remember that anything was done in the court; it was then that he proposed this plan of filing a petition in the Floyd Circuit Court to procure an order to present this question as it was presented up here.

Q. Was that petition filed that day, on Friday as you understand it?

A. Not on Friday; I am sure it was not.

Q. When was it filed?

A. It was filed on Saturday.

Q. The following day?

A. The following day.

Q. And the order taken of the Court that you proceed to Indianapolis to present the jurisdictional question; was it put in that form as you understand it?

A. I have never read the order; as I remember it was to proceed here to present the question of the clash of jurisdiction; I think that is my recollection of it.

Q. That was done under the advice of Mr. Watts the attorney for the receiver?

A. Mr. Watts prepared the paper.

By the Court:

Q. The question is whether or not it was done under his advice.

A. Oh yes it was his idea; it was his suggestion.

By Mr. LaFollette.

Q. Do you know if there had been any other papers filed in Court by Mr. Connor, the receiver, up to that time, to Saturday?

A. I knew of the filing of Mr. Connor's intervening petition, I think it was.

Q. That was filed on Saturday too, wasn't it?

Q. That was filed—yes that was filed before Mr. Watts's petition was filed.

Q. Did you talk with Mr. Watts about that?

A. I handed it to him when he came in; his attention was called to it when he came into court.

Q. After you handed him that petition what did he say to you, if anything, about it, and about what steps would be taken in regard to it?

A. He didn't talk to me about that; he took the petition and immediately filed his petition, as I understood it. After that he and Mr. Hester had some argument before Judge Utz about it. I took no part in that. I left the court room immediately afterward.

By the Court:

Q. Mr. Connor's petition that you speak about, that was the petition of this receiver to the Floyd Circuit Court showing his authority and his appointment by this court and asking that court to order its receiver to turn the property over to him?

A. That is my understanding: I didn't read it except at the first page.

Mr. Miller: Wouldn't it be better to have him read the petition?

Mr. LaFollette: I am not asking to prove the contents of the petition; that will go in evidence.

The Court: In the history of the transaction, you may show about the filing of the petition and what was done about it. Of course, as to the contents of the petition, that cannot be proved by the evidence of this witness.

The witness: I just handed it to Mr. Watts, and told him it was a petition filed by Mr. Hester for Mr. Connor, and he took it and went on to another desk; he didn't talk with me about it.

By Mr. LaFollette:

Q. What I want to know is, if you know what Mr. Watts said there about it to the Court, about this petition and what should be done with it, the petition of Connor, receiver?

A. All I heard Mr. Watts say was something about the petition not being, as I understood it, a full appearance by Mr. Connor.

By the Court:

Q. By whom.

A. By Mr. Connor; there was something of that kind as I recollect it. That was addressed to the court, you understand, not to me.

Q. There was a technical objection?

A. Of some sort.

By Mr. LaFollette:

Q. Did you hear anything further said about it other than that?

A. Not about that petition.

Q. And on Saturday the Court adjourned?

A. Yes sir, that was the last day of the term. It adjourned.

Q. Did you hear anything said in the Court in the presence of Mr. Watts about the disposition of the petition of Connor, receiver, about what entry should be made concerning it?

A. No, I heard nothing about it.

Q. Was it on the Monday following that you and Mr. Watts came to Indianapolis?

A. Yes sir.

Q. Was there anything said on that Saturday before your coming that you would come here on Monday,—or on Friday probably, before?

A. Yes, it was understood that we were coming.

By the Court:

Q. The question is whether there was anything said?

A. Well I must have been told that we were coming, because the order was made by Mr. LaFollette.

By Mr. LaFollette:

Q. It is a fact, isn't it, Mr. Jewett, that there was telephone communication to, the clerk of the district court at Indianapolis that you would come?

A. Yes.

Q. Was that from your office?

A. That was from my office.

Q. Was that conversation held by Mr. Watts?

A. By Mr. Watts with someone here.

Q. What was the statement made, did you hear that, by Mr. Watts?

A. I think I did; he stated he wanted to come to Indianapolis to present the question of the jurisdiction of the courts.

By the Court:

Q. Did he tell that to you, or do you say he said that over the telephone?

A. I wouldn't be positive about that.

Q. I want you to be positive about it. I want you to tell the court which it was.

A. I heard him go to the telephone, and he either said that over the telephone, or said it to me just at that time.

Q. You are not certain which?

A. I am not certain about that.

By Mr. LaFollette:

Q. Are you certain that you heard the telephone conversation that Mr. Watts held?

A. I wouldn't be certain I heard all of the conversation, or just what was said; I saw Mr. Watts go to the telephone, knew he was calling Indianapolis; the telephone is in the room in the office where everyone comes in and out, and there were other people coming in and out all the time; I wouldn't be positive about that.

Q. But as the result of that you did come to Indianapolis?

A. Yes.

Q. And you were here on Monday and Tuesday?

A. Monday and Tuesday.

Q. The question of jurisdiction of the courts was argued to this court?

A. Argued to this court all Monday afternoon.

Q. And any part of Tuesday?

A. Yes, Tuesday morning.

Q. Was Mr. Hester here representing the petitioning creditors?

A. Hester and some other gentleman, I don't remember his name, of Chicago.

Q. And after that argument you reached a conclusion about the matter, did you?

A. Yes sir.

Q. And that was that you were to turn over the property to Mr. Connor, receiver?

A. Yes sir.

Q. You speaking for the receiver, you representing the trust company, and Mr. Watts, your attorney also?

A. Yes.

Q. Before leaving here it was stated both by you and Mr. Watts that you would return to New Albany and turn the property over to Mr. Connor, the receiver appointed by this court?

A. He stated that distinctly, and so did I.

Q. What time did you reach New Albany on your return?

A. About seven o'clock of Tuesday night.

Q. Do you know where Mr. Watts went on Tuesday night?

A. No, I left him at 14th street, is my recollection.

Q. At Louisville?

A. Yes, we go to 14th street and come back across the bridge.

Q. He didn't go to New Albany that night?

A. Not so far as I know.

Q. When did you next see him?

A. I think it was the next afternoon.

Q. That would be Wednesday?

A. Wednesday.

Q. Where?

A. He came in the office; that is my understanding.

Q. Your office at New Albany?

A. Yes sir, he came in there that afternoon; I am not very clear about that, whether it was that day or Thursday; he did come in the office and asked me to telephone to Mr. Kelso.

By the court:

Q. What did he say?

A. He asked me how late Mr. Kelso stayed in his office and I told him he left between four and five o'clock, and he said—he asked me to call him up and ask him to wait until he and Mr. Sachs could get there.

Q. Now who was it asked you to do that?

A. Mr. Watts.

Q. William W. Watts, the defendant here.

A. Yes sir.

By Mr. LaFollette:

Q. Hadn't you seen Mr. Watts from the time you went home from Indianapolis until the time when he and Mr. Sachs came together to your office and asked you to call up Mr. Kelso?

A. Not to my recollection.

Q. Do you know whether there had been anything said about this matter in the court or to Judge Utz prior to that time?

A. No, Mr. Watts had told me that he was going to see Judge Utz with Mr. Sachs.

Q. When did he tell you that?

A. Going down on the train.

Q. That he was going to see Judge Utz with Mr. Sachs? Do you know how it came that he connected Mr. Sachs with the matter?

A. Yes sir, he explained that to me; he stated that he was going to bring Mr. Sachs to New Albany to see Judge Utz, and have Mr. Sachs talk to Judge Utz, and, as I understand it, justify the course he had taken in Judge Utz's eyes; justify himself with Judge Utz by having Mr. Sachs talk to Judge Utz.

Q. Did you know at that time as you came down from Indianapolis, that Judge Utz would disagree with the course you had taken?

A. I did not; I understood—

Q. (Interrupting) Well, I understood that he would agree with it.

Q. You made the statement up here that you would turn over the property, and Mr. Watts consented to that, and then as you went home Mr. Watts said that he would get Mr. Sachs, a lawyer from Louisville, to come over and talk with Judge Utz and satisfy him that the course you had taken was right? Is that the way it occurred?

A. No, don't understand me to say that he was to justify his giving up the property, but justify him about the proceedings he had taken about coming up here to present the question of jurisdiction. There was no question about justifying the turning over of the property.

Q. But that matter had been presented to the court before you came, as I understood?

A. Yes sir.

Q. If it had been presented to Judge Utz, and he had made an order that you should come, what occasion would there be on your way home for getting a lawyer to come over and having him justify it?

A. I don't say I saw any occasion for it. Mr. Watts made an explanation to me of what he intended to do about squaring himself with Judge Utz to show that he had not made a mistake.

By the Court:

Q. In what proceeding?

A. This petition, coming into your court and praying to raise this question of the clash of jurisdiction. Your Honor

will remember he entered a special, limited appearance, and I understood that Mr. Sachs was to explain to Judge Utz that that was a proper proceeding.

Q. That was the way you understood it?

A. Yes sir.

Q. What did Mr. Watts say to you about it?

A. He said he was going to bring Mr. Sachs to New Albany to explain to Judge Utz that he had taken the proper proceedings in this matter by coming up here into this court on Monday; that is what he said to me.

By Mr. LaFollette:

Q. Then on Wednesday afternoon, you think, they came to your office?

A. Yes, I wouldn't remember that, except as I say, Mr. Kelso said I telephoned him, and I have no doubt I did.

Q. You remember they came to your office?

A. On one occasion.

Q. Was there any conversation had there then about the proceedings that had been had here and at New Albany in the courts, or about any other proceedings that was to be had?

A. No, I didn't discuss that with them at all.

Q. Did they mention that to you?

A. No.

By the Court:

Q. Who do you mean by "They"?

A. Mr Sachs and Mr Watts.

Q. It was they who came to your office, and it was for them that you telephoned Mr. Kelso?

A. It was for them that I telephoned Mr. Kelso.

Q. What did you say to Mr Kelso?

A. Told him two gentlemen were coming around to see him.

Q. And to wait at his office?

A. To wait at his office.

By Mr. LaFollette:

Q. How soon after that did they leave your office?

A. They left immediately.

Q. Do you know what purpose they had in coming to your office? Was there anything occurred there that would give you that information?

A. I think Mr. Watts came in to ask me about one of those Louisville claims; goods that had been sold by Mr. Zier & Company to a firm in Louisville, and there was some question about the payment for them.

Q. Then you had some conversation with him about that claim?

A. That is my recollection about what he came in for.

Q. Had you ever known Mr. Sachs before then?

A. No.

Q. Were you introduced to him by M. Watts when he came in.

A. Yes, I was introduced to him.

Q. That was the first you knew of him.

A. Yes sir, I had met his brother before.

Q. Did you call to mind then that this was the same gentleman that Mr. Watts spoke about when you were on your way home from Indianapolis?

A. I assumed he was.

Q. Did you say anything about the matter of the proceedings in the M. Zier & Company case in bankruptcy?

A. Not at that time.

Q. You didn't talk about that at all?

A. There was no discussion as far as I can recollect.

Q. You didn't talk with Mr. Sachs about what his view was about your coming up here, whether he would justify Mr. Watts or not?

A. No, I didn't talk about that; he did at another time when I was present, talk about that, but I have no recollection of anything being said then.

Q. Did you know at that time that there was being some steps taken before Judge Utz to have you discharged or removed as the receiver—that is the New Albany Trust Company?

A. I did not.

Q. Had you learned up to that time that Judge Utz was disapproving the course that had been taken by you?

A. No, I talked to Judge Utz in the morning about it, and while he had not expressed any approval of it, he did not express any disapproval.

Q. That was Wednesday morning?

A. Yes sir; he came in the office.

By the Court:

Q. You say you told him then what you had agreed to do?

A. Yes, I talked with him about it.

Q. And told him you had offered to turn over the property to the receiver of this Court?

A. Yes sir.

Q. And he made no objection at that time?

A. Not as I understood it. He certainly didn't say we should not.

By Mr. LaFollette:

Q. That was at your office on Wednesday morning? Was anyone with him at that time when he came into your office?

A. No.

Q. Then following that, after you had had that talk that morning with Judge Utz, and then in the morning you met Mr. Watts and Mr. Sachs, as you have stated, when after that did you learn that there was some proceeding being taken to prevent you from turning over the property or to take some other methods of getting the property?

A. I learned the next day when I went to Judge Utz's office that he didn't want to turn over the property, when we tendered our resignation and stated that we had agreed to turn it over in writing and had filed that paper.

Q. Was there anybody else present in Judge Utz's office at that time?

A. Yes, Mr. Watts and Mr. Sachs, and I am under the impression Mr. Kelso was there and Judge Utz.

Q. That was on Thursday?

A. That was on Thursday morning.

By the Court:

Q. And it was the evening before that that you had telephoned Kelso that two gentlemen would come over to see him?

A. I suppose it was. I say I don't remember that, except from Mr. Kelso's statement about it.

By Mr. LaFollette.

Q. Now you may state what was said there by Mr. Watts or by Mr. Sachs when you tendered your resignation, and stated that you were turning over the property to Mr. Connor, receiver?

A. Mr. Watts said he had advised the company while here to turn the property over; that is while in the court here; and either I or Mr. Watts read a paper, my recollection is I read a paper, and Mr. Sachs remarked that our giving up the property was contempt of the Floyd Circuit Court, and the paper ought not to be allowed to be filed.

Q. Mr. Sachs said that?

A. Said that, and Judge Utz said the paper should be filed. I stated in connection with what was said that I had stated to this court that the property would be turned over, and it would be turned over, and Judge said something about he would not expect me to break my faith or something of that sort, but he said the property must not be turned over just at that time; I understood it was until we had made some showing to his court of our proceedings.

By the Court:

Q. (Interrupting.) State what he said?

A. I said I couldn't state the exact language.

Q. I mean not what you understood him to mean, but what you understood him to state?

A. He stated that the property should not be turned over until we had made a further report, or a report, as I understood

Q. Were Watts and Sachs with Judge Utz when you went in?

A. That is my recollection that they were there.

By Mr. LaFollette:

Q. At that time, Mr. Jewett, do you remember whether Mr. Watts said anything about your not turning it over?

A. No, if he did say anything about not turning it over, I didn't hear it.

Q. But Mr. Sachs said you should not turn it over?

A. No, Mr. Sachs didn't say that; he said the filing of that paper was a contempt of the Court, and it ought not to be allowed to be filed.

Q. Did he make any explanation of that other than to say it ought not to be allowed to be filed? What was there in the paper that he referred to, if you know?

A. Why our statement that we intended to turn over the property.

Q. Was there anything said at that time by Judge Utz in the presence of Mr. Watts and Mr. Sachs about that if there was not—if they didn't find any law to authorize the holding of the property that he would find Indiana law to hold it? Do you remember any expression of that kind?

A. No, I don't remember about that; there was some discussion about the law, but I don't remember what was said.

Q. How long were you there before the Judge? The court, I believe, was not in session?

A. No, the court was not in session. I was there about twenty minutes, I should say.

Q. What was said by you that probably the property had already been turned over, that Mr. Connor was at your office when you came away?

A. I don't remember to have said that at that time, although I may have done it. Mr. Connor had been at the office, and we had offered to turn it over to him, and I may have said it at that time that it probably had been turned over; I am sure I said—that I spoke of Mr. Connor having been there at our office.

Q. Do you know whether or not there had been any papers filed before the court for the purpose of preventing the turning over of the property at the time you were over here before Judge Utz?

A. I did not.

Q. Did you know of there being a paper or a plea of some kind filed by D. A. Sachs on behalf of the United States Tube Company?

A. I do not.

Q. You did not know that there was a paper filed in which the New Albany Trust Company was being charged with having wrongfully and unlawfully, and without leave of the Floyd Circuit Court, turned over and surrendered the possession of the M. Zier & Company boiler plant, etc., to Frederick D. Connor, who was acting as receiver in bankruptcy and so forth.

A. I didn't know anything of that paper until the trust company was cited for contempt of the Floyd Circuit Court, and then I was informed of that paper.

Q. And do you call to mind now when you heard of that? When you got that notice?

A. I think it was recited in the citation to us.

Q. But when it was is what I want to know.

A. I couldn't say whether that was Thursday or Friday.

Q. Did you learn in the meantime that an entry had been made removing the trust company as receiver and appointing Mr. Kelso?

A. Not until I heard of this citation for contempt of the Floyd circuit court; that is the first I learned of any of that proceeding.

Q. Had there been any talk of that with you or in your presence?

A. There never was at any time.

Q. When, after you did learn of that, and after you had been citied for contempt, did you have any conversation with Mr. Watts about it?

A. No, I never talked with Mr. Watts after the time I filed the resignation up to the time that I testified to when I went to Louisville to tell him that my brother could not appear for him in this proceeding; that was on Monday; the 23d, which was a legal holiday, I went to Louisville that day, and gave him that message.

Q. What I particularly had reference to was whether or not Mr. Watts talked to you or you to him about the matter of being in contempt, as charged, of the Floyd circuit court? Whether he talked to you about that or had any conference with you about it?

A. No I didn't talk to him about that at all.

Q. Were you present before Judge Utz at the time the matter was talked about and also, suggested that proceedings be instituted against you and W. W. Watts also.

A. No sir, I heard nothing of that.

Q. You heard nothing of that?

A. I never was there after the time I filed the resignation.

The defendants did not cross-examine the witness.

Witness excused.

Edward Fitzpatrick, a witness called on behalf of the Government, being duly sworn, and examined by Mr. LaFollette:

Q. State your name?

A. Edward Fitzpatrick.

Q. Where do you live?

A. I live in New Albany.

Q. Are you acquainted with Charles L. and Henry Jewett?

A. Yes sir.

Q. Do you know where their office is in the city of New Albany?

A. Yes sir.

Q. Are you acquainted with D. A. Sachs and W. W. Watts?

A. Yes sir.

Q. Do you remember of having been in the office of Jewett and Jewett in New Albany during probably the last week in February last when Mr. Sachs and Mr. Watts came to their office?

A. I do.

Q. Can you state definitely when that was?

A. I could not state the date. I know it was on Wednesday because I am detailed to go to New Albany on Wednesday; I am employed in Louisville as a newspaper reporter; and I go to New Albany not to write news but to write gossip on Wednesday and on this Wednesday I called on Mr. Jewett to congratulate him on his recovery from a spell of sickness. I did not remain long, just a moment, and whilst I was there I saw Mr. Sachs and Mr. Watts and I looked at Mr. Sachs and said, "Hello Sachs, what are you doing over here." and He said, "I am just over here to help out my friend Watts and I passed out after talking to Mr. Jewett a moment.

Q. Did you hear any conversation between either of the Jewetts and either Watts or Sachs?

A. Oh no, I did not. I did not remain in the office but a moment.

Q. Was that statement you have related all that you heard while you were there?

A. That was all. There was something said about the weather and about New Albany people and I said something to Mr. Sachs about taking him and showing him the town, but further than that I recollect nothing else.

Q. Did you see them anywhere else while you were over there?

A. No sir; I did not meet them any place else and did not think about afterwards.

Charles L. Jewett, a witness called for the government, being duly sworn and examined by Mr. LaFollette:

Q. You may state your name to the court?
A. Charles L. Jewett.
Q. Where do you reside?
A. New Albany.
Q. You are a practicing lawyer?
A. Yes sir.
Q. A member of the firm of Jewett & Jewett?
A. Our firm name is C. L. and H. E. Jewett.
Q. You are acquainted with D. A. Sachs and William W. Watts, are you?
A. Yes sir.
Q. You knew of the company that was doing business at New Albany in the name of M. Zier & Co.?
A. Yes sir, we were their attorneys as a firm and as a corporation for probably ten years.
Q. Had it been a corporation that long?
A. No sir; I think about four years ago they attempted to make a corporation and prior to that time it had beeen a firm composed of Dr. Edward Zier of Minneapolis and Michael Zier, brothers. Then an attempt was made to incorporate it by corporation papers and Mr. Urey, the bookkeeper, as I remember it, became the third corporator, but I don't remember exactly about it.
Q. Do you remember the stockholders of the company and how much they owned of it respectively?
A. I saw the stock book in December, but I would not undertake to give the exact proportions; there was no stock subscriptions that ever I knew of. In fact, under the form under which they were incorporated no occasion for it as I saw it. It was incorporated with the idea of a corporation taking all the property of the firm for all of the stock of the corporation. It was incorporated with only $25000 of stock and to answer the question more in detail, I think the stock was issued, two or three or four shares to Mr.Urey, something nearly half of the total capital stock to Michael Zier, two or three shares of the stock to Dr. Edward Zier of Minneapolis, and something less than half of the total capital stock to Minnie M. Zier his wife, now widow, and I think Doctor Zier became the president and I know that Michael Zier was made vice-president and treasurer and Mr. Urey the secretary.
Q. Were you familiar, that is somewhat familiar with the business and plant for some years by reason of being adviser? adviser?
A. Only in this way—
The Court: The question is not how, but the question is were you familiar.
A. Then I was never in the plant in my life. I know where it is located, in some buildings belonging to the Monon Railroad.

Q. What I mean more particularly is did you know of its financial standing?

A. I knew it was hard pressed, and I knew that recently that it was insolvent, thoroughly satisfied of that, at the time of all these matters inquired about.

Q. How long before December last had you been advising with Michael Zier, who was the manager of the plant, as to the financial condition and what might result as to the plant?

A. I think the only matters that Michael Zier and I talked about as to the financial condition of the plant, up until about November and December, was the matter of the indebtedness to Mrs. Minnie Zier. He talked to me about that. The business of the firm, that is their controversies over contracts and so forth were usually talked over with my brother, who was the detail man, and Mr. Zier talked with me about Mrs. Zier's matter. I well knew Doctor and Mrs. Zier, they were friends of mine.

The Court: There's no question about who were your friends. Just answer the question.

Q. How much did the concern owe Minnie Zier, if you know?

A. $18000—I can only give round figures—$18000. on account of a couple of notes that had been—

By the Court: Just answer the question. How much it was that was owing to her. He did not ask you anything about the note.

A. $18000 and a note of $1725. is all that I knew anything about.

Q. Nearly $20,000?

A. Yes sir.

Q. Did you know prior to December the firm of Ryerson and Son of Chicago?

A. Never; that is, I knew there was such a firm in my talk with Mr. Zier; it is a corporation.

Q. You knew it or learned it from Zier?

A. Yes sir.

Q. When did you first meet a representative or agent of that company?

A. Never until I went to their place in Chicago.

Q. What was the purpose of your going to their place of business in Chicago?

A. A three-fold purpose. Mr. Zier had told me that they were trying to find a partner or some one to put money into the business to keep it going and that he thought they would help him. Mr. Zier usually spoke—

The Court: Never mind about what he spoke; just answer the question.

A. These were the purposes I was going for.

The Court: The purposes cannot be what he usually spoke; just answer the question.

A. I went there for the purpose of ascertaining whether they would give him any financial assistance, do anything to bring the company out of its difficulties and whether they would as the largest creditor institute proceedings for a receivership in the State court, and that latter was the principal business in my mind. I did not have much faith in the other proposition, although Mr. Zier did; that is, I did not attach much importance to it.

By the Court:

Q. The principal thing on your part was to see whether Ryerson & Son would institute proceedings in the State court against M. Zier & Co.?

A. Yes sir.

Q. And you represented M. Zier & Co. at that time?

A. Yes sir that was it.

By Mr. LaFollette:

Q. Did you know before going to Chicago who represented Ryerson & Son, or whether they had an attorney?

A. No sir.

Q. Did you know substantially how much money was owing to Ryerson & Son?

A. Yes, sir I had their account.

Q. How much was it?

A. Substantially, $15000.

Q. Did you know the fact that about $3100 had been paid to Ryerson & Son within the last few months prior to the time you went to Chicago.

A. I think so. I think the statement showed it.

Q. Do you know the date of the payment?

A. I could not undertake to say now, but I should say that it was within the time you mentioned.

Q. Did you have in your hands for collection the claim of Minnie Zier?

A. No sir.

Q. In what way did you represent her and act for her?

A. I did not represent her.

Q. Under what arrangement or for what reason was the money paid by M. Zier & Co. for Minnie Zier to you?

A. Mr. Zier told me about the middle of December that he was ready to pay her the money; I had heard before that he intended to pay her and I supposed that these sums that he had taken out of the business for her were being paid direct to her. Her agent, Mr. Mergel, had been there, but I had never seen him. He had been to the bank. He always said Mr. Mergel,—he said, I wrote Mr. Mergel to send you Minnie Zier's papers. I want to pay that money and he said "I wish you would get them and he would inquire

whether they had come or not. So I telephoned to Mr. Mergel, he gave me his address, and I telegraphed Mr. Mergel to send the Zier papers and in that connection wrote him that I wanted to know Minnie Zier's connection with that firm. I called it a firm because I had not regarded the corporation as being well carried out; I wanted to know about that; in answer to that he sent me copies of two notes assigned by the New Albany National Bank, assigned without recourse; one of them Mr. Connor has. He sent me copies, he did not send the originals; meanwhile we had talked about the matter of the receivership.

Q. You had talked that with Mr. Zier?

A. Yes, sir. He wanted to get some way by which he could keep the plant going and at the same time get some adjustment with his creditors and he believed that Ryerson & Son, of whom he was a large customer, would come in an aid him in this by financial means if he could keep this thing going. It was my own offer late in the month after these copies of notes came—then I said to Mr. Zier, I am going to Chicago as we had arranged for me to go and see Ryerson & Son and I will pay that money to Mr. Mergel. That was my own proposition, as I recollect it. Mr. Zier wanted those notes sent down to our office to be paid and Mr. Zier paid the money, I think he paid it on the 24th and the 26th of December.

Q. In two separate payments?

A. I think he paid two sums; I think the books show that on the 24th—

The Court: It is not a question of what the books show.

A. It was not paid to me, but to my brother, I was not present.

Q. If you don't know, say you don't know.

A. It was paid on the 24th of December, except $2100 and that was paid on the 26th of December.

Q. Making all together $9600?

A. Yes sir.

Q. You took that money with you when you went to Chicago?

A. No sir; not all of it; I took $9000, I said to Mr. Zier—

The Court: You have answered the question.

Q. You appropriated $600 as a fee?

A. Yes sir, I required him to pay a fee and gave him a receipt for it.

Q. Altogether you got $9600 and kept $600 and took $9000 to Chicago and paid it to Mr. Mergel?

A. Yes sir.

Q. Did you meet him at Chicago?

A. Yes sir.

Q. He did not live there?

A. No sir; I telegraphed him to meet me at Chicago.

Q. And you turned over the money to him there?

A. Yes sir; that is, I gave him a draft for it.

Q. At that time you were there also for the purpose of arranging for the institution of a suit which you regarded in the nature of a friendly proceeding in the interests of the defendants as much as of the plaintiff?

A. Yes, sir; a friendly receivership to keep the plant going.

Q. By having a receiver appointed, who would under the law and directions of the State court operate the plant and subsequently arrange with the creditors?

A. Yes sir, that was the real purpose of my visit to Chicago.

Q. Up to that time had you had any conference with William W. Watts?

A. No sir.

Q. You did not talk with him about it?

A. No sir.

Q. The plan of proceeding in the State court at New Albany to have a receiver appointed and operate the plant of M. Zier & Co. was a plan you had formulated yourself?

A. Yes sir, between Mr. Zier and myself.

By the Court:

Q. Well, you went to Chicago for the purpose of arranging with Ryerson to bring this friendly suit?

A. That was my desire.

Q. Did you tell them you had brought to Chicago $9000 of the assets of this corporation and turned it over to one of the stockholders?

A. No sir.

Q. And the arrangement was made that they should bring this friendly suit and adjust the affairs of this corporation and you had just paid over $9000, which you said nothing about?

A. That is it.

Q. (By Mr. LaFollette): Had you had any correspondence with Minnie Zier herself?

A. No, she—

The Court: That question is answered.

A. I never had any correspondence with her in my life.

Q. Had you had any correspondence with her agent prior to the time that Michael Zier told you that he wanted to pay her a part of what he owed her?

A. No sir; I did not even know his name and I did not know she had an agent.

Q. You learned that through Michael Zier?

A. Yes sir.

Q. And then at his request you telegraphed to that address but received only copies of the notes?

A. Yes sir.

Q. Then after having received copies of the notes, M. Zier turned over to you $9600, and you telegraphed the agent to meet him at Chicago and you paid him $9000?

A. Yes, sir.

By Mr. Miller. It certainly seems to me that this hearing will be long enough if the testimony is stated once, without the district attorney repeating it over again and summarizing it after the witness; I object to that.

Mr. LaFollette: We will save you that.

The Court: Don't have any unnecessary repetition.

Q. When you got to Chicago and went to Ryerson & Son whom did you converse with there?

A. First with Mr. Hamford, the credit man, the man I endeavored to speak about a while ago.

The Court: Just answer the question and we will get along a great deal faster; if there is an explanation proper you may make it.

Q. Did you with him talk about the kind of suit you wanted to have brought?

A. Yes sir; I told him the kind of suit I wanted to have brought.

Q. Was he familiar with court proceedings?

A. He manifested a good deal of familiarity with them yes sir.

Q. Did he indicate to you if you instituted proceedings of that kind against M. Zier & Co. that it might result in bankruptcy proceedings.?

A. Yes sir.

Q. Did you talk that matter over with him? Did you tell him that the plan you had formulated you thought would avoid that?

A. No sir; I did not tell him that. I told him on that point, but I did not tell him that. I talked with him on that point.

Q. Did any one else engage with you in the conversation of behalf of Ryerson & Son?

A. Mr. Jackson was sent for, whom I regarded as an attorney about the place.

Q. Did he talk with you on the same subject?

A. Yes sir.

Q. Did you explain to him the plan that you had in mind about the suit?

A. Yes sir I think so.

Q. And wanted them to institute it?

Q. Did he manifest a knowledge of court proceedings?

A. Yes sir.

Q. Was he familiar with the bankrupt law also?

A. I think so.

Q. Did he talk to you about the probability of a suit instituted resulting in bankruptcy proceedings?

A. I think so.

Q. By the Court: What was said about that?

A. Well, I was going to say; I said in substance that this suit would not prevent bankruptcy proceedings. I remember they asked me if there could not be bankruptcy proceedings, if Zier & Co. had not committed acts of bankruptcy.

A. I said lots of them; preferences, lot of them, and the company is insolvent, but we believe if suit is filed in the state court and the property operated and the creditors all notified and brought together the matter can be kept in that shape and I said to them I believed the state court would retain the property, the plant, and operate it anyhow, and the principal argument I advanced—

The Court: You were asked what you said?

A. I said the bankrupt courts would be loth to operate a small plant like that at a distance and I thought a receivership in the state courts would be the best for all parties concerned, as far as operating the plant was concerned. When I say I said this to Mr. Jackson—Mr Jackson and Mr. Hamford and I were all talking and as to who I addressed the remarks to I cannot remember.

Q. That is not material.

A. And I talked about the town, that we wanted to keep the factory going; that the plant was in leased buildings and its stoppage and failure to pay rent would forfeit the lease and it would destroy the business of the concern and they knew the reputation of the boilers made there and so forth; so that to sum it up I was urging upon them that it was best for them and everybody, but especially I was representing Zier and Company to keep the plant going, to keep the men employed, to have a state receivership, and I advocated the idea that I did not think the bankrupt court would operate the plant and that was the trend of the matter I also talked afterwards, to I think the gentleman's name is Butler; this is a corporation of New York and Chicago, and I think Mr. Butler is the vice-president at Chicago and I talked with him and he wanted to see the general attorneys of the firm and it was arranged that I would meet with Mr. Jackson and Mr. Hamford at the office of these attorneys of the firm in Chicago that afternoon, I think at two o'clock; this was on the 29th of December, which was Monday, and the day before the Receiver was appointed; in a general way, that was all I said.

Q. That was agreed on—it resulted in an agreemetn to bring this suit?

A Not there, not there, not there; I urged the suit but they did not assent to it there. Mr. Butler, as I understood, he was to meet with these attorneys and me, but he did not; of course they had the statements of this concern there and insisted—I took up the statement showing that the indebtedness of the firm—just a general statement that Mr. Zier had furnished showing the indebtedness of the firm was much better and we talked about that because they brought out statements showing that the assets were reported as much larger and wanted me to explain that and I told them that I could not; that I had asked Mr. Zier to give me a true statement of this concern and he had given this estimate to me and it was made out in my office but not in detail.

Q. Do you know where Mr. Zier got that $9600 when he paid it to you?

A. No sir.

Q. Did you ask him about it?

A. Yes sir.

Q. You knew he got it out of the business?

A. Yes sir.

Q. You knew he got it out of the corporation?

A. It was corporation money.

Q. You knew the corporation was insolvent?

A. Yes sir.

Q. When you were in Chicago talking about indebtedness and that there had been preferences did you tell them anything about having brought up $9000 and turned it over to one of the stockholders?

A. I did not tell them so, I said nothing about that.

Q. When did you reach the conclusion as to what steps should be taken in the same day?

A. In the afternoon.

Q. Of the 29th.

A. Of the 29th and I think the firm—

The Court: The question is when you reached that conclusion?

A. At the office of this firm.

Q. What was said to you, if anything, about who would represent them at New Albany?

A. All that was said to me on the subject of who would represent them at this meeting in the afternoon, Mr. Hamford and Mr. Jackson, who were present, with the attorney, Mr. Fisher, I think,—Mr. Hamford asked me the names of our attorneys at New Albany and I gave him their names generally, three or four of them; we have not very many; and I gave him the name of Mr. Stotsenberg, Kelso—

The Court: Read him the question.

The question was read by the reporter.

A. That was said, and after a while Mr. Hanford and the attorney, Mr. Fisher, if that was his name, went out and had a consultation in another room, and Mr. Jackson and I remained.

The Court: We don't care anything about that. Just answer the question.

A. They returned and said, and then for the first time I heard Mr. Watts' name; either Mr. Hanford or the lawyer said, I cannot tell which, "Mr. Watts of Louisville will represent us."

Q. Had you said anything to them about Mr. Watts?

A. No sir, it never occurred to me—

The Court: Just answer the question.

Q. Then what did you do after you learned from them that Mr. Watts would represent them? What did you do about the matter?

A. I went back to the hotel and telephoned to my brother my conclusion of the matter—I am entirely willing to state that if it is proper.

Q. That he was to appear for M. Zier & Co.?

A. No sir. I said this in substance to my brother. That I had seen these folks and that they had not determined the matter, but that Mr. Jackson was coming down to Louisville to consult with the Watts, I think I said, it is a firm; that he was coming down that night, and that they would determine the matter, and that I thought they would apply for a receivership, because I think I said to him, "Jackson takes the same view of it that I do: and if they send for you you can go over and consult with them."

Q. You know how Mr. Watts' name was brought into the consultation there in Chicago?

A. I have told you all I know on that subject. That is the first time I heard Mr. Watts' name brought into it.

Mr. Fairleigh: I would like for him to state fully.

Mr. LaFollotte: He said he has stated all they said.

A. That is all they said. I said something.

Mr Fairleigh: I want to know how he got Mr. Watts' name.

A. I don't know how they got Mr. Watts' name

Q. By the Court: The question is do you know how they got Mr. Watts' name?

A. Not a word. I said—

The Court: That answers the question. You are a lawyer. You know that it is not necessary, but just to answer questions.

Q. Was the suit instituted before you came back to New Albany?

A. Yes, sir; I did not get back to New Albany until—

The Court: You have answered the question.

Q. When did you return to New Albany?

A. I think on the evening of New Year's.

Q. How soon after you did return did you have a conversation with Mr. Watts the attorney for Ryerson and Sons?

A. I do not now remember.

Q. Did you have any conversation with him before the creditors' meeting that has been spoken of here?

A. I probably did. I saw him over there but I do not recall any conversation; it was just a casual conversation if I met him.

Q. Do you recall any conversation you had with him about having the creditors' meeting and the purpose of it?

A. No sir.

Q. Do you remember of having been present at that meeting?

A. Yes sir; I was there.

Q. Were you representing M. Zier & Co. at that meeting or representing the creditors, which?

A. I would say both.

By the Court:

Q. Which meeting was that?

Mr. LaFollette: The meeting in the court called the creditors meeting.

Q. You say you represented both a debtor and a creditor.

A. I would say I represented both.

Q. Both the debtors and the creditors?

A. I think so.

By Mr. LaFollette:

Q. Was there any statement made by you at that meeting to the court or meeting?

A. I think so.

Q. Did you understand that that was a matter that was being presented to the court as a court?

A. I understood that it was to take the sense of the creditors as to whether the court would order the plant to be operated to complete existing contracts and that the views of the creditors were to be taken.

Q. What was said to you or anyone to you either before the meeting or at the meeting about there being an order entered enjoining creditors from taking steps other than in that court?

A. Nothing, and I never expected any such thing.

Q. You did not know anything about that?

A. No sir, I did not know anything about that; I left before any order was entered.

Q. Do you know who formulated the order that was entered?

A. Mr. Watts was working on it at a table. I think he formulated it.

Q. Did you read it over?

A. No, sir—I left before

Q. You did not hear it read?

A. No, sir—I never heard it read.

Q. Was there anything said by you there at that meeting—either by you or any of the creditors, about what disposition had been made of the assets of the concern and about its solvency or insolvency, and the amount it would probably pay on its indebtedness.

A. I think the subject was generally talked over—all those things you have named.

Q. Did you say anything there about having paid the $9000 to Minnie Zier?

A. No, sir.

Q. Did any creditor say anything about that?

A. No, sir.

Q. Was there anything said at that meeting by Ryerson & Son about having recently received a credit on their claim of $3100?

A. Not that I heard.

Q. Was not the ability of the plant to pay money mentioned and talked about?

A. I think it was not the ability to pay money—I think the advantage and disadvantage of operating it was talked about.

Q. Did W. W. Watts represent Ryerson & Son at that meeting?

A. Yes, sir.

Q. Did he also represent the Receiver, the New Albany Trust Company?

A. Yes, sir.

Q. Was it not one of the questions that was being considered, the advisability of having the plant continue to operate and as an argument in favor of it, was it not made to appear that they had been able recently to make payments on their indebtedness?

A. I would answer the first part of that question yes. I have no recollection of anything being said about recent payments.

Q. Did not any of the creditors in talking about the advisability of continuing the plant speak of or inquire whether or not they had been making any money, whether or not they could make money if they would operate it?

A. Probably.

Q. Did not Mr. Watts, representing Ryerson & Son; say that it would be profitable because they had quite recently made payments on their debt of over $3,000.

A. I heard nothing of that kind.

Q. And you did not urge in favor of its operation that they had quite recently paid on an indebtedness, $9000?

Mr. Miller: He has already said there was not a word said on that subject and I object.

The Court: I think the point well taken.

Q. The question was not argued very fully as to those matters at all?

A. I do not remember that the question of payments was mentioned at all.

Q. Was there any objection made by any of the creditors to operating the plant?

A. I understood it was unanimous.

Q. After you came back from Chicago and talked to Mr. Watts about the business, was there anything said about bankruptcy proceedings before any were instituted?

A. No sir.

Q. Was there anything said by him to you either at the creditors' meeting or before about taking any steps at that meeting to prevent anything of that kind?

A. By Mr. Watts to me?

Q. Yes.

A. No sir.

By the Court:

Q. Then you say that that part of the order which attempted to enjoin the creditors from proceeding in any other court or any other suit except by intervention in that suit or action was without your knowledge?

A. Yes sir.

Q Without any authority from you; I did not expect it.

A. Yes sir, I did not expect it.

Q. The inference is that Mr. Watts put that in the order?

A. No sir.

Q. He was drawing the order?

A. I don't know who put it in. He was drawing the order. And I was informed at whose suggestion it was put in, but it was not Mr. Watts.

By Mr. LaFollette:

Q. When did you learn that bankruptcy proceedings were instituted?

A. I cannot say, but my impression is that I never learned of any bankruptcy proceedings, until Mr. Connor either came down with his order or some one told me that the summons had been served on Mr. Zier. I think he brought in the summons or subpoena.

Q. Did you know personally of the filing by Mr. Connor of the petition in the Circuit Court asking the receiver of the state court to turn over the property to him as receiver?

A. No sir.

Q. You did not know personally about them?

A. I was not present; I heard of it afterwards.

Q. Did you take any steps in connection with it or go to the court about it?

A. No sir I was not in court that day.

Q. Did you know that the petition was filed by Mr. Watts for the receiver asking an order to appear at Indianapolis and discuss the question of the jurisdiction of the two courts?

A. I heard that it was to be done and was done.

Q. Did you talk with Mr. Watts about it before it was done.

A. Yes sir.

Q. At your office or in the court room?

A. At my office. There was a few words said.

Q. Do you remember what was said? If so state it.

A. I think Mr. Watts asked me whether I thought if the matter was presented to Judge Anderson he would allow the receiver down there to continue to operate the property and my impression is I told him I thought Judge Anderson would permit the State receiver to operate the property. I think Mr. Watts said to me that he was going to telephone up either to Mr. Butler or Judge Anderson on that subject and the telephoning was done in our office, but I was working on a brief in the library some distance off and did not hear what was said.

Q. Did you know of the entry by the Floyd Circuit Court of the order continuing the petition of Mr. Connor asking that the property be turned over to him by the Trust Company?

A. No, sir.

Q. You were not present here when the question of jurisdiction was discussed before the Court?

A. No, sir.

Q. When following that did you learn that the statement had been made here that the Trust Company would turn the property over?

A. The next day.

Q. What conversation, if any, did you have with Mr. Watts or Mr. Sachs on the next day about the matter?

A. I think it was the next afternoon they came in the office and there was some talk about it.

By the Court:

Q. What afternoon was that?

A. I think it was Wednesday afternoon.

Q. What was said?

A. I do not recall that Mr. Sachs said anything about it, except that he was there, but Mr. Watts talked about arguing it up here; said that my brother had said that the Trust Company would turn over the property and that he said he would advise it. That was the substance of the conversation. In addition to that he said—do you want the whole conversation?

By Mr. LaFollette:

Q. Yes if there was anything further said about it?

A. He said he was very much—he thought he had been misunderstood by Judge Anderson and he appeared to be mortified about it, that he had not intended the construction that had been put on his acts and saying the things a man does under such circumstances where he thought he had been misunderstood. He talked at length.

Q. Was there anything said at your office on Wednesday afternoon about taking any other proceeding in the State court to hold the property in that jurisdiction?

A. No sir.

Q. When did you first learn that Judge Utz of the circuit court was objecting to turning the property over by the Trust Company?

A. On the following morning—forenoon.

Q. Where were you when you learned that?

A. In my office.

Q. From what source did you learn it?

A. From my brother Henry.

Q. Did he come and tell you at the office?

A. Yes sir.

Q. Then what did you do following that information?

A. I indicted. I dictated, I should say, a little note to Mr. Connor, that is here—based on what my brother had said to me, stating that he had filed a report and attached a copy of the report to it, stating that we had filed a report and that the Judge had orally remarked that we should or that he preferred, or something to that effect—asking that we not deliver the property to Mr. Connor until our report was filed, that we thought that report could be filed on the following morning and that if Mr. Connor could defer his demand until then it would relieve the receiver, or the Trust Co., or us, or something, or considerable embarrassment, but if he insisted, we were bound to say that good faith required that the property be surrendered to him and I told my brother to take that around to Mr. Connor and he asked me to go and see if I could not get the report accepted, and that was my first appearance.

Q. In the Court? When you went over to the court for that purpose who was present there?

A. Judge Utz. It was in his chambers, not in the court room.

By the Court:

Q. It was in vacation?

A. Yes, sir. Judge Utz, Mr. Watts, Mr. Sachs and I think Mr. Kelso were sitting in the corner and either the clerk or the deputy clerk. I am inclined to think it was the deputy clerk, Will Ruoff, that was sitting there?

Q. Had you learned then of the action of Judge Utz in refusing to accept the resignation?

A. No sir.

Q. What was said by you at that time and by Judge Utz in the presence of Mr. Watts and Mr. Sachs about the subject.

A. I cannot recall, except that while I was there I said either that my brother or the receiver had told Judge Anderson that the receiver would turn the property over to Mr. Connor and that not withstanding anything else or something of that kind, it was going to be done and was probably done.

I will correct one thing: when I went in Mr. Sauer the secretary of the company was there. My brother said to me, "If Fred Sauer is over there, send him over." And when I went in, I said, "Mr. Sauer, my brother wants you at the Trust Company," and he got up and went out and I said to Judge Utz, "It is probably done now." The conversation, I can not recall the words, but I think in a general way they were discussing whether the decision to turn it over was right or not, the law of the case. But I can not undertake to give what was said.

Q. Was there anything said by Mr. Sachs or Mr. Watts against turning it over.

A. No sir; not in my presence. I think I said in that conversation that Mr. Watts had advised it or agreed or promised it himself. I think I said that and he assented to it. I do not remember that Mr. Sachs said anything. I was talking to the Judge and I was there a very short time.

Q. Did you know at that time that there were arrangements being made to have Mr. Kelso appointed receiver instead of the Trust Company?

A. No sir.

Q. There were not any proceedings taken while you were there by the Judge?

A. Not in my presence and not while I was there.

Q. When did you learn, if you did, that some proceedings were taken to have the Trust Company cited for contempt of court?

A. In the afternoon I think of Thursday.

Q. Did you go before Judge Utz in regard to that matter with the president of the Trust Company?

A. Yes sir.

Q. Who was present at that time as near as you can remember?

A. The same persons. There may have been some others in there.

Q. D. A. Sachs was present?

A. I won't say whether Mr. Sachs was there.

Q. Was Mr. Sachs there?

A. But I think they were both there.

Q. Was there any one there acting in the matter of having proceedings taken against the Trust Co. or any attorney representing that proposition?

A. Apparently not.

Q. Was the court doing that on his own motion?

A. I cannot say about that.

Q. Or rather the judge, there was no court, I guess. Did you make any written answer for the Trust Co.?

A. No sir, no written answer.

Q. Did you know that there were charges also against Watts for contempt?

A. I think so. I think the rule contained his name.

Q. Do you know what he said or did in regard to answering that citation?

A. No sir.

Q. You were not present when any steps were taken?

A. In fact I know nothing except what I said and the judge said when I went in with the president of the Trust Co.

Q. At that time you knew that Mr. Kelso was to be appointed receiver or had been?

A. No sir, I did not.

Q. You did not know it yet?

A. He had not been.

Q. He had not been appointed?

A. Not to my knowledge.

Q. When did you learn that he had been appointed?

A. Saturday morning.

Q. He had been appointed the day before?

A. I learned it from the newspaper and I asked my brother about it and learned it from him.

Q. Did you know during the evening of Friday that proceedings were being had and that the sheriff had gone down and taken the property from Mr. Connor?

A. No sir, after supper I did not go out in town?

Q. You did not learn that until Saturday?

A. I read it in the paper that was my first knowledge of it.

Q. A matter is suggested that I want to ask you about. At the time that you went over to say to the Judge that you would turn over the property in response to the statement that has been made here that it would be turned over, and while talking to the Judge on that subject, did Mr. Sachs ask you some question in regard to the act of the law and did you reply to him that you did not want to be interrupted? When he asked you if you had turned the property over—do you remember that incident?

A. No sir.

Q. So far as the matter of turning over the property and its being retaken by the sheriff and being put into the possession of Mr. Kelso, you have stated all you know about that? What further do you know about that?

A. I have stated all I know about the retaking of the property. There is much I know about the turning over of the property by the Trust Co., the efforts to turn it over that I have not stated and would be glad to state it if permitted, if you desire to know.

Q. You did turn it over?

A. Yes sir.

Q. That is substantially all there is of that, except the details which I do not care for?

A. Very well.

Q. Since the property was turned over, I want to ask you a little further about the matters that we were inquiring about prior to the institution of the suit. You have also returned to Mr. Connor, or paid to him, have you not, a part of the money that was paid you by M. Zier & Co.

A. I returned to Mr. Connor the $600, attorneys fees, less expenses to Chicago, $50 for that service. I gave him a check for $534.80. You have the check and letter I suppose.

Q. You may state if this note and the receipt attached is the paper you received and on which you first made payment of the money.

A. This is the note which was paid in full and taken up. This is the receipt showing the application of the whole $9,000 and identifying the other note on which the balance was credited. This is a statement of intention, I do not know what you would call it, written by Michael Zier at the time and delivered to me.

Q. That was delivered to you at the time you paid the money?

A. Yes sir, part of that transaction.

Q. Since that time you paid back the $600 less expenses to Chicago and $50.

A. Yes sir.

Q. (By the Court:) What was the $50 for.

A. The $50 was what I estimated the work performed for Mr. Zier at Chicago in getting Ryerson to bring the receivership suit—for those services, and there was $15.00 expenses.

Q. (By Mr. Lafollette): If you were returning the fee you received in the first place, why did you not return it all.

A. I thought that having performed only that service and being unable to perform any service while I might have kept it as it was paid me as a fee and while I thought it was usual to charge an insolvent a fee when you took his business, I had money there I had not earned and could not earn and I preferred for my own sake after talking to my brother to turn it back to these creditors. At that time I did not know how this money had been gotten out of bank, that the bank had paid the money upon checks that purported to be for payroll. Having learned that from Mr. Connor, I said under the circumstances, "I think it all ought to be paid back," and he so understood.

By the Court:

Q. All of what?

A. Of the $600, that we got. I did not know until Sunday night about these checks, he brought them up, I never saw any papers or books, except the stock books.

By Mr. LaFollette:

Q. Did you have any notice of the manner in which Michael Zier had taken the money out of the concern, that is under the color of being weekly payrolls and appropriating $1000 of it to this fund?

A. No sir, never; never.. I would not have touched it if I had.

Q. After you had paid back the $600, less $50 and expenses, did you also give Mr. Connor a guaranty or agreement that you would pay back to him for the benefit of the Zier estate the whole amount of the $9000.

A. There is the agreement, will you read it?

Q. "Dated March 9, 1903. To F. D. Connor, receiver, M. Zier and Company, bankrupt. December 29th, 1902"—1903 I guess that is intended for?

A. No that is right.

Q. December 29th, 1902, I paid E. F. Mergel for Mrs. Minnie Zier, the sum of $9000, of the funds of M. Zier and Company. Disclosure made by your examination of the books and papers during the last few days, satisfies me that this money still belongs to M. Zier & Co. and should be returned to the estate of said bankrupt. In view of the fact that the money passed through my hands, I hold myself

responsible for its return and guarantee it shall be paid to you on demand. CHARLES L. JEWETT."

A. Yes sir, indeed, that is just the way I feel now.

Q. Why do you bind yourself for that?

A. If I am allowed to answer that fully I would be glad to do so.

By the Court:

Q. You are always allowed to answer a question why.

A. Because I think that I ought not in view of all the facts to have handled the money and paid it over. Because I believed and still believe the transaction as to me was entirely legal, but when I find out that these men had been taking the money out of bank of their corporation by means of making a check for wages when in fact it was being accumulated—I think I ought to have been more careful. I inquired particularly of Mr. Zier about this and Mr. Zier told me sometime before—

The Court: You are giving your reasons now.

A. Unless I can make them full, I can not explain it. I want to state all the facts as to my connection with the money that moved me, because I thought that was due me and I would be very glad to state it.

Q. Proceed then.

A. After Dr. Zier's death, sometime, I do not know how long after the payment of these notes by Mrs. Minnie F. Zier, $18,000 in bank, Mr. Zier told me that he had promised and intended to pay it back and proceeded about how he thought of his dead brother's widow's money being taken that way and said that he was going to pay it back as he could. I knew that he was paying people as they pressed him. I never knew until he mentioned to me the fact that he had ordered these papers sent to me—I never knew but what that amount had been paid to Minnie Zier and I did not know how he took it out or anything of the kind, and when he suggested that he wanted the papers sent down and wanted it paid, I wrote to Mr. Mergel and wanted to know all about Mrs. Zier's connection with the concern, whether she had ever been a stockholder or creditor, and when I took the money I took it and paid it myself with the thorough belief that this company had a right, as I believed, and still believe, to pay any valid obligation, and my point was to know that the obligation was valid, that it was not some simulated family indebtedness. When I saw the notes assigned by Mr. McCullough, the President of the New Albany Bank, I had no doubt about the validity of the indebtedness, but I ought not to have handled the money at all. I see that now. I ought to have been more careful. I asked Mr. Zier stood on the books, how he paid it out.

And he said it was charged to him, Michael Zier, treasurer, for Minnie Zier. I never saw the books in my life. I don't see why I did not go and insist on looking at the books and feeling that way, I feel without reference to anything else that unless Mrs. Zier's agents, knowing these facts, sees fit to pay that money back, I have felt that I would be on better terms with myself to pay it back. I did not include my firm. I said I would myself pay it back.

Q. Is Mr. Mergel a lawyer?

A. I think not. He is the vice-president of a bank. That seems to be his business.

Q. In view of your knowledge of the bankrupt law and knowing that this was a preferred payment that the company was making, and in view of possible bankrupt proceedings, did you not arrange with Mr. Mergel that in the event bankruptcy proceedings were instituted that would probably necessitate the return of the preferred payment, that he was to hold this money subject for future demands if it became necessary to have it returned?

A. No sir; the paper there written by Mr. Margel explains that.

Q. Did you at the time that you came back from Chicago and the institution of these proceedings talk with W. W. Watts about this payment and the circumstances under which it was made, and so forth?

I never talked with Mr. Watts about the payment and so forth, no sir.

The Court: I wish you would call the attention of the witness to the letter of Mr. Mergel and read it.

Q. Is this letter dated December 29th, the letter to which you refer?

A. Yes sir.

The letter referred to was read as follows:

"Dec. 29th, 1902.

M. Zier, Esq.:

In reference to the payment made by Mr. Jewett on behalf of your company will say that I know that my client is earnestly desirous that your matters result to your satisfaction and advantage. In case same money could be used to advantage in making adjustments and clearing up all the matters you wish to have adjusted and Mr. Jewett has said you wished to get a clear settlement with everybody, including my client, I would recommend to my client to use the funds for that purpose by way of assistance. This is all I care to say. Yours truly,

E. E. MERGEL."

The Court: Is that the explanation?

A. Yes, sir; that refers to his getting a settlement with his creditors.

The Court: When you answered the other question no and said the letter explained the situation, you meant that letter explained it?

A. That is it; yes, sir.

By Mr. LaFollette:

Q. Did you make any explanation of this payment and letter to any of the creditors in connection with the business after your return from Chicago?

A. No, sir.

Q. Your return or statement that you have made to Mr. Connor and here is the only statement you have made about it up to that time?

A. Up to that time.

CROSS-EXAMINATION.

Questions by Mr. W. M. Smith:

Q. I understood you to say that on Thursday afternoon when you returned to the court house you was not quite sure Mr. Sachs was there or not.

A. Yes sir. My impression is he was, but I am not sure. I think he was there.

Q. You are not sure Mr. Watts was there on Thursday afternoon, either, are you?

A. My impression is he was. I did not sit down. I just walked in with Mr. Mosier and stood at the table and addressed Judge Utz. I did not sit down.

Q. May it not be that you are mistaken about their presence that afternoon?

A. Yes sir; it may be. They may not either have been there. I may have seen them on the street.

Q. Do you know what time in the evening it was that you returned to the court house?

A. I think it was the middle or after the middle of the afternoon.

W. C. Utz, a witness called on behalf of the government, being duly sworn and examined by LaFollette, Esq.

Q. You may state your name to the Court?

A. William C Utz.

Q. Where do you live?

A. New Albany, Indiana.

Q. Are you the judge of the Floyd Circuit Court?

A. Yes sir.

Q. How long have you been on the bench of that court?

A. Since November 26, 1898.

Q. Do you hold court in any other county or is that the only county in your circuit?

A. Floyd County is a judicial circuit, the fifty-second.

Q. Are you acquainted with Mr. W. W. Watts, an attorney?

A. Yes sir.

Q. Does he practice in your court.

A. The first he ever practiced in my term of any term of court was the January term, 1903.

Q. Was that at the time of filing the case of Ryerson & Son against M. Zier & Co.?

A. The Ryerson suit was filed on the 30th of December, 1902, in vacation.

Q. Had you been acquainted with him before that time?

A. I had no personal acquaintance with him previous to that time; I knew him by sight.

Q. Had you been acquainted prior to that time with D. A. Sachs, an attorney of Louisville.

A. No sir.

Q. When did you become acquainted with him?

A. On the 18th day of February.

Q. You are acquainted with Charles L. Jewett and H. E. Jewett?

A. Yes sir.

Q. You are acquainted with Charles D. Kelso?

A. Yes sir.

Q. They are each members of the bar of your court?

A. Yes sir.

Q. You are acquainted with Mr. Hester, who is also a member of your bar?

A. Yes sir.

Q. Tell the court whether or not you had any information relative to the institution of the suit by Ryerson & Son against M. Zier & Co. prior to the day of its being filed?

A. I had not.

Q. When did you first learn that such a case was pending in your court?

A. When Mr. Watts and Henry E. Jewett came into my office with the suit about two o'clock on the afternoon of December 30th.

Q. What statement, if any, was made to you at that time by either of them?

A. I think it was stated in a general way by Mr. Watts and by Mr. Jewett about his indebtedness, that he was unable to meet it. Mr. Watts handed me the complaint showing the amount of the indebtedness to Ryerson & Son on which they had a prayer for the appointment of a receiver. I read the complaint and about that time Mr. Zier came in.

Q. Michael Zier?

A. Yes sir.

Q. You say he came in?

A. Yes sir, he came in and consented to the appointment of a receiver.

By Mr. LaFollette:

Q. What was said to him and by him after he came into the room?

A. I cannot state exactly what was said to him. I know there was some discussion or some talk as to the fact of him being insolvent and unable to meet his obligations, and it was agreed that the receiver should be appointed and it was appointed and the receiver was appointed in the usual way.

Q. That was the same day that the petition had been filed.

A. Yes sir.

Q. Who was appointed receiver?

A. The New Albany Trust Company.

Q. Did you fix a bond?

A. I think under the statute they are not required to execute any bond. They did not execute any bond.

Mr. Miller: That is a trust company.

A. Yes sir.

Mr. Fairleigh: And their stock is the security.

Q. Was Mr. Jewett representing or acting for the Trust Co. or was Mr. Watts?

A. As I understood, Mr. Watts was acting for Ryerson & son and Mr. Jewett was there as the attorney of Mr. M. Zier & Co.

Q. Up to that time there was no one representing the Trust Co.?

A. No sir.

Q. Who was it indicated to you that the Trust Co. would accept the trust?

A. I understood from both what Mr. Watts and Mr. Jewett said that it was agreed that if it met my approval that the Trust Company should be appointed.

Q. What else, if anything, was done that day?

A. The order was made and signed appointing the Trust Co. and the Trust Co. qualified that afternoon, as I recollect it.

Q. How soon after that did your court convene?

A. A very short time. I think it was either on the 6th or 9th of January, that it convened. I would not be positive.

Q. What was the next step, as you remember it, in connection with that case that was taken?

A. I think there was some matters in regard to some contracts that were unfinished, they were of minor—little importance, about which I made an order.

Q. Do you remember of a meeting being arranged, known as the creditors meeting?

A. Yes sir.

Q. That arrangement began on the 16th day of January, when the Trust Co., as I remember it, filed a petition. And on that petition a notice was ordered to be given to the creditors, and the petition showed that there was some unfinished contracts, and some creditors claiming they had a right to have certain property delivered to them.

Q. That meeting of the creditors, so-called, was held in open court, was it?

A. Yes sir.

Q. Tell the court whether there was at that time any statement made to you as the court about having an injunction entered enjoining creditors from taking any steps other than by intervening petitions in that case?

A. Yes sir, that was one of the last things that occurred?

Q. Who proposed that to you?

A. I think it was Mr. Stotsenberg. He was representing some of the creditors and I am inclined to believe that the matter was discussed not in open court, but by the attorneys while the court was still in session. I think Mr. Stotsenburg and one or two attorneys took part in the talk among themselves.

Q. Was Mr. Watts present on that day?

A. Yes, sir.

Q. For whom did he appear at that time?

A. For the receiver, the New Albany Trust Co.

Q. Who was appearing for Ryerson & Son?

A. I understood at the beginning that Mr. Watts was acting for Ryerson & Son at the time of the institution of the suit.

Q. He never withdrew his appearance for them?

A. No, sir.

Q. He still stood on the record as attorney for Ryerson & Son?

Q. Yes, sir.

Q. And he also appeared as the attorney for the receiver?

A. Yes, sir.

Q. And on the day of the creditors meeting, did he make any statement on behalf of his client, Ryerson & Son?

A. If he did, I do not recall it now.

Q. Who prepared the entry that was put upon the record that day?

A. I think Mr. Watts did.

Q. Was that read over to the meeting before being entered?

A. I think not.

Q. Did you read it over yourself?

A. Yes sir.

Q. Did you know that it provided for an injunction that has been talked about, enjoining them from taking any other steps?

A. Yes sir.

Q. Did you make any change in it after it was drawn, or did you approve it as prepared?

A. I made a change. There was an injunction against Hoerter and Hester who appeared as attorneys for the Inland Steel Co., and I said to the attorneys, "I don't think that ought to go into the order, that I thought they were acting in the belief that they had a legal right to do what they were doing and I struck that out of the order.

Mr. Fairleigh: He is talking of the original order.

A. No sir on the 24th of January, at the creditors meeting.

Q. It had that in it when it came from Mr. Watts to you?

A. What provision do you refer to?

Q. The one enjoining Hester and so forth?

A. Yes sir.

Q. I am asking about the order they had on the day when they had the creditors meeting?

A. Yes sir, that is the order.

Q. I don't have these dates in mind. Let us get that straightened out.

A. I don't want to make any mistake.

Q. What I mean is this: you remember distinctly what they call a creditors meeting?

A. Yes sir I do.

Q. Was it at that meeting that an order was entered on the record of your court enjoining the creditors from taking any steps other than by intervening petition in the case of Ryerson & Son against M. Zier & Co.?

A. Yes sir, I think so.

Q. Do you know the date of that?

A. That was on the 24th of January, 1903. I want to make this statement in that connection: I do not think that order contained that provision as to the attorneys. I think I am in error as to that and I want to make that statement?

Q. When was that order?

A. It was made later on the 18th of February.

Q. The order which you speak of as having been prepared enjoining Hoerter and Hester from taking certain steps in behalf of the Inland Steel Co., was that made at that meeting or at a later meeting?

A. At a later meeting, I recall that now.

Q. So far as you have stated in regard to that, you desire to correct it?

A. I do.

Q. Was there such a statement made at any time or prepared for you to enter of record enjoining Hoerter and Hester from taking certain steps?

A. Yes sir.

Q. When was that made?

A. Fourteenth of February, the last day of our court.

Q. By whom was that prepared, if you know?

A. I couldn't state that. When I got the order it had been prepared.

Q. Who brought it to you?

A. My recollection is that W. W. Watts did.

Q. You may state to the court whether or not that provision that was in the prepared order seeking to enjoin the attorneys, Hoerter and Hester, from proceeding in the case in certain ways, was stricken out by you before the same was entered of record?

A. Yes sir.

Q. In that same connection, I want to ask you if at that time the bankruptcy proceedings had been instituted in the district court?

A. At what time?

Q. At the time this order was presented seeking to enjoin the attorneys from taking steps?

A. I think so. That morning was the first official information I had of the proceeding in bankruptcy.

Q. I want to ask you if at that time there had been filed in your court by Mr. Connor, receiver in bankruptcy, a petition that the property of M. Zier & Co. be turned over to him?

A. The petition of Mr. Connor was filed before that order was entered.

Q. But the same day, was it not?

A. Yes sir.

Q. Then after that was filed, what attorney appeared and sought for an order enjoining these attorneys from taking the steps you have spoken of?

A. W. W. Watts was appearing for the receiver and seeking to obtain an order directing him to come to this court on the following Monday.

Q. By the Court: And he also sought and obtained an order enjoining the Inland Steel Co., and the marshal and receiver of this court from proceeding any further in this court?

A. Yes sir.

Q. Mr. Watts procured that order from you?

A. Yes sir.

By Mr. LaFollette:

Q. That entry was presented to you by Mr. Watts?

A. Yes sir.

Q. And that had in it originally when he brought it to you the injunction against the attorneys also?

A. Yes sir.

Q. Then striking that out you spread it of record, enjoining Mr. Connor and the Inland Steel Co. from proceeding in the bankruptcy proceedings?

A. Yes sir.

Q. And that was at the solicitation of W. W. Watts, attorney for the New Albany Trust Co., the receiver in the state court?

A. Yes sir.

By the Court:

Q. What did you do with this petition that Mr. Connor the receiver of this court filed in your court asking you to direct your receiver to turn the property over to him?

A. The petition was filed and the entire morning was taken up in the business of the court.

Q. The question is what did you do with Mr. Connor's petition?

A. I did not do anything, because, as I understood it there was to be some order prepared in regard to the matter, Mr. Hester and Mr. Watts, as I understood it, were to present the matter to me. Mr. Hester at that time did not seek the order—

Q. Did you not testify here in this court on the hearing of the contempt proceedings against Kelso and others that you continued that petition until the next term of court?

A. Yes sir that is what I did, we had no time to take it up.

Q. When did the next term of your court begin?

A. The ninth day of March.

Mr. Miller: We have not been able to find this petition filed by Mr. Connor. The entry is there, but the petition is not there.

Mr. Hester: Is not that here in the petition he filed here?

Mr. Miller: If we could get hold of that we would like very much to have it in the record with the rest of the papers.

Mr. LaFollette: If the court will permit, I think I will let Mr. Hester examine as to the proceedings down in the court. He was party to the proceedings and he may ask the questions.

By Mr. Hester:

Q. The petition of Mr. Connor intervening in the case of Ryerson & Son, against M. Zier & Co. was filed shortly after court convened in the morning? Was it not?

A. I think so.

Q. And before Mr. Watts came in?

A. I believe you are right about that.

Q. Then it was stated by Mr. H. E. Jewett that Mr. Watts would be in presently with another petition or something to that effect to you?

A. Yes sir.

Q. Nothing further was said then on the strengh of that statement about the intervening petition but Mr. Watts' appearance was awaited?

A. That is correct.

Q. After that Mr. Watts came in and addressed the court and stated that Mr. Connor's petition had been filed showing that he had been appointed receiver by the United States District Court and asked him the court to require him to enter a full appearance.

Mr. Fairleigh: Are you not leading a little too far?

Mr. Hester: I think the witness would be influenced by leading questions. These matters have been gone over so often.

Mr. Fairleigh: I don't mean to be captious, but don't lead too far.

Q. What was said about entering a full appearance, if you remember?

A. My recollection is that Mr. Watts asked you whether you entered a full or general appearance?

Q. What reply was made to that?

A. You said the paper would speak for itself.

Q. Did Mr. Watts read the petition to the court, to you?

A. He did not.

Q. You understood the nature of it from what was stated, I suppose?

A. Of course, I could not state explicitly, I could state in a general way.

Q. To refresh your recollection, did I not state that it was a petition showing Mr. Connor's appointment, embracing a certified copy of the order of appointment of this court?

A. That is my recollection.

Q. Then what did Mr. Watts do in respect to filing the petition prepared for the New Albany Trust Co.?

A. He filed the petition.

Q. Let me go back just a moment. Before he filed that, what did Mr. Watts say about how and when it had been prepared as to his having been up all night?

A. I could not state whether he said that at that time?

Q. Immediately before he began reading the petition?

A. Yes sir, I think he did.

Q. What did he say about that?

A. I think he stated he had been up a good part of the night preparing the petition.

Q. And he proceeded to read the petition, did he?

A. Yes sir.

Q. Then you asked him I believed if he had an order prepared on the petition?

A. I would not be positive whether I asked him that question or not.

Q. But there was an order submitted at that time?

A. Yes sir.

Q. You say that order embraced an injunction against the Inland Steel Co. and the other petitioning creditors in bankruptcy and against Mr. Connor as receiver and Mr. Pettit, as United States marshal, and also against Judge Hoerter and myself against further prosecuting any suit in this court?

A. Yes sir.

By the Court:

Q. Mr. Watts brought you that order?

A. That is my recollection.

Q. Was it not prepared on the same kind of paper and by the same typewriter?

A. I think so.

Q. And both brought in at the same time?

A. Yes sir.

Q. After you told Mr. Watts in open court that you would not consent that an injunction would go against the attorneys and directed him to strike that out, state what afterwards was said by him to you in that respect later in the day at any time?

A. I don't know.

Q. Was anything more said about the injunction against the attorneys on the street or in the clerk's office.

A. I don't recall it if there was.

Q. Don't you remember that that order, after the names of the attorneys had been stricken out of the part providing for an injunction—that it was interlined and the names put in a second time and brought to you a second time?

A. It may have been.

Q. And that you then a second time instructed Mr. Watts that you would not consent to an order of that kind?

A. I think that is correct.

Mr. Miller: I would like to inquire if testimony or questions can be more leading than that?

The Court: It may be possible, but the witness don't seem to remember it until suggested.

Mr. Hester: I would have a right to refresh his recollection about those details even by leading questions.

The Court: Yes; this witness is supposed to understand what questions are and he can answer himself without being led.

Q. Then what was done about striking the names out a second time if anything?

A. They were stricken out.

Q. And it went on the order book as amended that way?

A. Yes sir.

Q. Do you remember when it was entered of record?

A. I could not state that; it was probably sometime after the court adjourned, as the clerk was considerably behind with his work as he usually is at the end of the term.

A recess was here taken for dinner after which the direct examination of Judge Utz was continued by Mr. Hester as follows:

Q. In this same order of which you were speaking before lunch, you may state what, if anything, with reference to punishing these different parties for contempt besides the injunction you have already spoken of?

A. What order do you refer to?

Q. The one that was entered on Saturday?

A. The last day of court?

Q. The last day of the January term of court.

A. Yes sir, I think there was some provision of that kind in the order.

Q. Will you state to the court as near as you can what that provision was and against whom it was directed?

A. I think it was directed against the Indland Steel Co., the Day Time-Register Company and John C. Thurston.

Q. They were the petitioning creditors in these bankrupt proceedings?

A. Yes sir.

Q. And against whom else?

A. Against Mr. Pettus.

Q. Mr. Pettit?

A. Yes sir, if that is his name, the United States marshal and Mr. Connor.

Q. As receiver under appointment of this court?

A. Yes sir.

Q. In the order as first submitted to you, did the contempt provisions in that order also apply to the attorneys in the case?

A. Yes sir.

Q. That was Judge Hoerter and myself?

A. Yes sir.

Q. You know whether or not Judge Hoerter had ever had anything to do with this matter?

A. Nothing except I understood that Judge Hoerter and yourself were attorneys for the Inland Steel Co. That is all I can state.

Q. You may state to the court what Mr. Watts' attitude was in the matter when you stated to him that these contempt proceedings should not apply to the attorneys in the case, as to his being put out about it?

A. Well, he thought it ought to go in.

Q. Did he make any further remark to you after your remark from the Bench that you thought it ought not to go in?

A. I think Mr. Watts made some statements after that.

Q. When was it and when was it?

A. He said he thought that ought to remain in, but he was willing to leave it out.

Q. And it was stricken out a second time?

A. Yes sir.

Q. When did you first see Mr. Watts and Mr. Sachs after the return of Mr. Watts and Mr. Jewett from Indianapolis where they had attended the hearing of this case on the 16th and 17th of February?

A. On the afternoon of February 18th.

Q. That was Wednesday afternoon?

A. Yes sir.

Q. Where did you see them?

A. At my office.

Q. In the court house.

A. In the court house.

Q. Had you any arrangement to meet them there?

A. I think not.

Q. What time of day was that?

A. I think about two o'clock in the afternoon.

Q. Did you know they were coming?

A. My recollection is that Henry Jewett informed me sometime during the morning that they would be over sometime in the afternoon.

Q. How did he inform you of that?

A. I think he told me.

Q. Did you meet him?

A. Yes sir.

Q. Where did you see Mr. Jewett?

A. I think he was in my office on that morning.

Q. On some other business or on this?

A. I do not know what his business was.

Q. Did he have any other business there?

A. He did not state any.

Q. And he said that Mr. Watts and Mr. Sachs would see you in the afternoon in your office?

A. I am not certain that he mentioned Mr. Sach's name. I won't be certain of that, but I know he mentioned Mr. Watts.

Q. And it was in pursuance of that understanding that you were at your office that afternoon?

A. I would have been there anyway.

Q. It was in vacation?

A. Yes sir.

Q. Ordinarily, are you at your office in vacation?

A. Yes sir.

Q. What time did they come?

A. About 2.00 in the afternoon.

Q. Were they alone?

A. Yes sir—no, I beg your pardon, Henry Jewett came with them.

Q. Do you know where they came from?

A. No I could not state.

Q. Do you know where they had been before they came?

A. I do not.

Q. Did they say anything about where they had been?

A. Not to my recollection.

Q. What did they say was the purpose of their visit after they came in?

A. I do not know that they stated the purpose of their visit.

Q. What did you understand to be the purpose of their visit?

Question objected to by the defendants.

The Court: What did they say?

A. They came in, and as I recollect it, Mr. Watts—I think it was on that afternoon—he had a piece of brown paper that he had written a statement on in which he had stated that he had agreed at Indianapolis here with the court to advise the New Albany Trust Company to turn over the property to Mr. Connor the receiver of this court.

Q. That was stated in the paper?

A. Yes sir.

Q. Did he submit that to you?

A. Yes sir.

Q. Did you read it?

A. Yes sir.

Q. Then what was said?

A. I think Mr. Jewett also said that he wanted also to file a similar request.

Q. On behalf of whom?

A. On behalf of the New Albany Trust Company.

Q. As vice-president, I suppose?

A. He did not state, as to the vice-president. In behalf of the New Albany Trust Co. to turn over the property, but he didn't have the paper prepared, but that he would have it prepared probably by five o'clock.

Q. What was done or said about the paper submitted by Mr. Watts, by him or yourself?

A. There was nothing done that afternoon about it.

Q. What was said?

A. At that time?

Q. Yes.

A. Mr. Watts said that he wanted to comply with his promise to the judge of this court.

Q. And Mr. Sachs was there at the time?

A. Yes sir.

Q. What did he say?

A. Then the question as to the jurisdiction came up.

Q. Who brought that question up?

A. I think Mr. Sachs.

Q. What did he say?

A. Mr. Sachs was very positive in his opinion that the Floyd Circuit Court had jurisdiction over the property.

Q. Now judge let me ask you, did Mr. Sachs say that and discuss that question in an abstract way, or was it with a proposition that he had in mind.

Mr. Miller: If Your Honor please I object to that.

The Court: That is not proper; let him state what took place there and all that took place.

A. After that there was a general discussion, and Mr. Sachs did most of the talking.

Q. What did he say?

A. He simply said that the Floyd Circuit Court had jurisdiction over the property.

Q. Did anybody else discuss that legal proposition?

A. Yes I think that was Mr. Watts's opinion, and I think Mr. Jewett coincided with that view.

Q. Notwithstanding then, that Mr. Watts had filed a paper in which he offered to turn the property over and in which he sought to have the Floyd Circuit Court release its jurisdiction, he still maintained that the Floyd Circuit Court still had jurisdiction to retain the property?

A. I think so.

Q. How long did that meeting last?

A. Probably an hour.

Q. And were all these parties there during that time?

A. Yes sir.

Q. What else was said, judge?

A. I couldn't state that; that was the substance of what occurred.

Q. Were any other papers filed?

A. No, not that afternoon; Mr. Jewett informed me he thought he could not get that paper ready that afternoon.

Q. Was there any discussion as to steps to be taken afterwards?

A. None that I know of, except I will say this, that I stated to Mr. Jewett not to turn the property over, that I wanted to consider the matter further, and I wanted to consult some authorities.

Q. Did they submit any authorities that you remember?

A. No, I had some authorities.

Q. Were any authorities referred to you by either of the gentlemen at that time?

A. No.

Q. To refresh your recollection I will ask you whether anything was said about some cases, some bankruptcy cases that had been tried in which these parties represented the prevailing parties either in the circuit court of appeals for Kentucky or in the United States courts?

A. If I recollect that correctly, Mr. Hester, that was the next morning.

Q. Well did you have some arrangement with them in regard to meeting the next day?

A. No sir, I didn't have any except that I was to let Mr. Jewett know the next morning what was—what I thought about it in regard to turning over the property.

Q. Did you meet the gentlemen the next morning?

A. Yes.

Q. Where?

A. At my office.

Q. What time?

A. I should say about ten o'clock; now it was earlier than that; about nine-thirty, I expect.

Q. By what arrangement or notice was it that they came, if any?

A. Well I wouldn't state positive whether it was agreed or understood before they left that afternoon that they were to be back the next morning or not: I couldn't state that.

Q. Do you know anything about who arranged to have them come back the next morning?

A. Not unless it was agreed or understood there.

Q. You think it may have been understood before they left there?

Mr. Miller: I object to that.

A. I couldn't state positively about that. That is as near as I can state.

The Court: Come to the fact about what took place.

Q. Did you notify either of them any further that morning to come to your office?

A. No sir.

Q. Well who came?

A. I think Mr. Watts and Mr. Sachs came together, and then later Mr. Henry Jewett came in.

Q. How long after was it that Mr. Henry Jewett came in?

A. Well a few minutes; I don't know; it was not very long.

Q. Well what took place at that meeting?

A. I think there was very little said while Mr. Henry Jewett was there; I am not sure that even sat down; he walked in and I think about that time Mr. Sauer came in, the secretary of the New Albany Trust Company, and Mr. Henry Jewett said he would go back to the office, and his brother would come in and represent the trust company.

Q. He stayed but a short time?

A. A very short time.

Q. That left Sachs and Watts there with you alone?

A. No; I think Kelso was there

Q. Now what was said by either of these gentlemen in regard to turning over the property at that time if anything was said?

A. I do not remember of any discussion of it up to that time. We were waiting for Mr. Jewett to come over.

Q. C. L. Jewett?

A. Yes sir.

Q. Did he afterwards come?

A. Yes sir, in a short time.

Q. What did he say if anything about it?

A. He came in and Mr. Sauer was there and he told Mr. Sauer that he was wanted at the office of the trust company so Mr. Sauer left the room.

Q. Did he say what he was wanted for?

A. I don't recollect that he did.

Q. Then who carried on the discussion after Mr. Sauer left?

A. When Mr. Sauer left, Colonel Jewett made his statement that his brother had promised the judge of this court to turn over the property and that Mr. Watts had advised that course and had promised that to the judge of this court, and in good faith they were going to do it, and he talked at some length about the matter and during his statement of it, Mr. Sachs interrupted him, and asked him if the property had been turned over and Mr. Jewett made some remark that he did not want to be interrupted or something of that kind, and then Colonel Jewett completed his statement and got up and left.

Q. That was all he said?

A. Yes, sir, all that I recall.

Q. After Mr. Jewett left, what took place?

A. Then it was agreed by Mr. Watts and Mr. Sachs that Mr. Kelso was to take the receivership.

Q. That is take the receivership of the M. Zier and Company property in place of the New Albany Trust Company?

A. Yes sir.

Q. Had there been any resignation offered?

A. Colonel Jewett brought in the report asking to be permitted to make the report, and resigned.

Q. He did that on Thursday morning?

A. When he came in.

Q. That report was filed in writing, was it not?

A. And it was after that that Mr. Sachs asked if the property had been turned over?

A. While Colonel Jewett was making his statement is my recollection.

Q. And Jewett did not answer that?

A. He said, I think, what I said.

Q. But he did not answer the question whether the property had been turned over or not.

A. I don't think he did.

Q. Do you know whether it had been turned over or not at that time?

A. No sir, I do not.

Q. Do you know whether the New Albany Trust Company as receiver obtained the possesion of all the property that belonged to M. Zier & Co. and had it in possession at this time?

A. I do not quite understand the question.

Q. I mean do you know whether all of the property of M. Zier & Company, without any exception, was taken possession of and at that time held by the Trust Company as receiver of your court or if there was some property that they did not get, if you know?

A. Do you refer to the $9000?

Q. No. Did the receiver of your court upon its appointment get all of the property and assets of M. Zier and Company?

A. So far as I know. I was under that impression.

Q. Sauer left then, to go to the office of the Trust Co.?

A. Yes sir.

Q. And Jewett went back to his office and that left Kelso and Watts?

A. Yes sir.

Q. Now you may state further what discussion was had in regard to this property being turned over if there was anything said?

A. I think it was agreed there that Mr. Sachs—

Mr. Miller: I think I will ask the judge to say what was said:

The Court: Instead of saying "it was agreed," just state what was said and who said it.

A. I think Mr. Kelso asked Mr. Sachs to represent him as his attorney and Mr. Sachs agreed to do it.

By the Court:

Q. What else was said about that matter?

A. I think that was all as to that that I recall now.

Q. Was there any talk before that about the appointment of Mr. Kelso and that he should be appointed?

A. As I said a moment ago that was agreed.

Q. What was said by Mr. Sachs?

A. Mr. Sachs and Mr. Watts, both, as I recollect, stated that they would bear the expense whatever it might be for the receiver in the prosecution of any action.

Q. That was after it had been agreed on that Kelso should be appointed?

A. Yes sir.

Q. But what was said previous to that time, by either of these gentlemen about Kelso being appointed—how was Kelso's name first mentioned as a prospective receiver?

A. I think that came about in this way: on Wednesday afternoon, after Mr. Sachs, Mr. Watts and Henry Jewett were at my office, I called Mr. Kelso over the telephone and asked him if I could see him at his office the next morning at eight o'clock, that I wanted to talk to him, and he said he would be there, and the next morning I went to see Mr. Kelso at his office and told him—

Mr. Miller: What morning was that?

A. Thursday morning, the 19th, if I am correct as to the date. I went to his office and I told him I was of the opinion that the property ought not to be turned over by the New Albany Trust Company and that if it was I thought I would remove the Trust Company and I asked him if he would take the receivership.

Q. How did you arrive at that opinion?

A. From the statement that was made to me in the afternoon of Wednesday.

Q. By whom?

Q. From what Sachs and Watts said as to the law and from the examination I had made in the mean time.

Q. Then you met Kelso on the morning of the 19th at his office?

A. Yes sir.

Q. Did you then proceed to your office?

A. No sir, we went out Pearl Street and we both stopped in the office of the New Albany Trust Company and saw Mr. Sauer and Mr. Connor both there.

Q. Did you remain there any length of time?

A. No sir, only a moment.

Q. You did not know Mr. Connor's purpose in being there?

A. No sir. I only bid him the time of day.

Q. Did you and Mr. Kelso go to your office?

A. No sir, I went to my office and Mr. Kelso had an errand out the street and came in later.

Q. When you got to your office had Mr. Sachs and Mr. Watts reached there?

A. No sir, not for some time afterwards.

Q. They afterwards came in?

A. Yes sir.

Q. What time was it that these gentlemen came in that morning?

A. I said I thought it was about nine-thirty in the morning.

Q. Did Mr. Watts and Mr. Sachs come in together?

A. That is my recollection.

Q. What was said that morning in regard to the subsequent proceedings had in connection with this receivership?

A. I think I have stated that unless you can direct my attention to something else.

Q. How long did you remain there at your office that morning?

A. Until nearly noon I think.

By the Court:

Q. Did I understand you to say that at morning, on Thursday morning, Mr. Watts and Mr. Sachs agreed to bear the expenses of Mr. Kelso in his being appointed receiver and in his attempt to get back the property from the receiver of this court?

A. I do not know whether anything was said about the attempt to get back, but aside from that, the statement is correct.

Q. That is, they agreed to bear the expenses to back him, to pay the expenses of the receivership if he accepted it?

A. Yes sir.

Q. Did Mr. Watts and Mr. Sachs both make that promise?

A. That is my recollection.

Q. Did you meet these gentlemen that afternoon?

A. I think I did. I know I met Mr. Sachs, but I would not be positive as to Mr. Watts.

Q. At what hour?

A. Sometime about two o'clock.

Q. Where was that meeting?

A. At my office.

Q. Tell the court what took place there?

A. I think the conversation at that time was between Mr. Sachs and Mr. Kelso as to making the order removing the Trust Company and appointing him.

Q. What was done in that respect?

A. That order was made.

Q. (By the Court) What was said between Mr. Sachs and Mr. Watts and Mr. Kelso?

A. I cannot say all that was said; I can only state the substance.

Q. Give the substance of it?

A. They talked about the removal of the New Albany Trust Co., and Mr. Kelso's appointment, and the order which should be made, citing the Trust Co. to appear and show cause why they should not be punished for contempt of court in turning over the property?

By Mr. Hester:

Q. Can you state who suggested that the Trust Co. should be cited, or was there any such suggestion made?

A. Yes sir, I think so.

Q. Who made that?

A. Mr. Sachs.

Q. That the Trust Company should be cited for contempt?

A. Yes sir.

Q. Was there anything said about Mr. Watts being cited for contempt?

A. Not then, I think there was later.

Q. When was that?

A. Sometime later in the evening.

Q. Where did that take place?

A. My recollection is that was at Mr. Kelso's office.

Q. Who was present at that time?

A. I think Mr. Kelso and Mr. Sachs and myself.

Q. Was Mr. Watts there?

A. I would not be positive as to that.

Q. Who suggested that Mr. Watts be proceeded against for contempt?

A. Mr. Sachs.

Q. Was a citation issued afterwards?

A. Yes sir.

Q. As a result of that suggestion?

A. Not wholly.

The Court: What was not wholly?

Mr. Hester: That it was not issued as a result of that suggestion wholly.

A. I was considering the matter if the Trust Co. could be cited, I was rather of the opinion that Watts also should be cited.

Q. You say you do not remember whether Mr. Watts was present then or not?

A. I would not state positively.

Q. Did you have another meeting on Friday with these gentlemen?

A. Yes sir, I think so.

Q. Was that in the morning?

A. That is my recollection.

Q. Where was that held?

A. In my office.

Q. Who were present?

A. Mr. Kelso was there, Mr. Sachs was there and Mr. Watts was there a part of the time.

Q. Had Mr. Watts been served with a citation for contempt at that time?

A. I think he had.

Q. What was said by either Mr. Watts or Mr. Sachs as near as you can recollect at that meeting?

A. I do not recall anything now that Mr. Watts said, unless my attentiou were directed to it.

Q. By anyone else, if you can remember?

A. There was some talk between Mr. Kelso and Mr. Watts as to the proceedings that should be had for the purpose of recovering this property.

Q. What did Mr. Kelso say about that?

Mr. Fairleigh: You don't say Mr. Watts was there.

A. I think Mr. Watts was there sometime in the morning.

Q. But at this time was anything said by Mr. Watts?

A. I do not recall that Mr. Watts said anything.

By Mr. Miller:

Q. What day was this?

A. Friday.

By the Court:

Q. What did Mr. Sachs say with reference to the receiver getting possession of the property?

A. I can only state in substance what he said. I can not use the words that he said.

Q. State the substance?

A. That after the Trust Co. was removed, they were to make a demand for the property on Mr. Connor and if it was not turned over then send the sheriff with a writ and take the property.

Q. Who suggested that?

A. I would not say who suggested that, whether Mr. Kelso made the statement or whether Mr. Sachs made the statement.

Q. Was Mr. Sachs present when it was made?

A. Yes, sir.

Q. By Mr. Hester: Was he representing Mr. Kelso at that time?

A. Yes, sir; acting as Mr. Kelso's attorney.

Q. Mr. Kelso was acting as receiver?

A. Yes, sir.

Q. Had he qualified as receiver then?

A. I think not. I think the papers were being prepared at that time or were in the course of preparation.

Q. Do you know what time that day he did qualify?

A. Sometime in the afternoon.

Q. Was he required to give bond?

A. Yes, sir.

Q. You think the bond was filed sometime in the afternoon?

A. Yes, sir.

Q. You approved the bond?

A. Yes, sir.

Q. Who brought the bond to you for approval?

A. Yes sir, Mr. Kelso.

Q. Was Mr. Sachs there then?

A. Yes sir.

Q. He was present?

A. Yes sir

Q. When was that?

A. I am not positive whether that was on Thursday afternoon or Friday afternoon, the record there will show.

Q. Did these gentlemen remain at your office on Friday afternoon?

A. A very short time and then they went to Mr. Kelso's office. Mr. Sachs and Mr. Kelso went to his office and I saw nothing more of them until late in the evening.

Q. Where was Mr. Watts during this time?

A. He was about the city.

Q. New Albany?

A. He came into my office in the afternoon between two and three o'clock Mr. Watts did.

Q. What was his business there, what did he do or say?

A. He wanted to get an extension of time for filing his response. He was there when Col. Jewett came in with Mr. Mosier.

Q. Mr. Jewett came with Mr. Mosier the president of the Trust Co?

A. Yes sir.

Q. He came in for that purpose?

A. He came in for the purpose of asking that I grant him further time to prepare a response.

Q. That was the response of the Trust Co. to the citation for contempt?

A. Yes sir.

Q. Mr. Watts was there and asked for further time?

A. Mr. Watts was there when Mr. Jewett came in.

Q. Were they granted further time?

A. Yes sir.

Q. Until when?

A. Until the following Wednesday.

Q. Did you see anything more of Mr. Watts and Sachs that day?

A. I do not know whether I saw anything more of Mr. Watts or not. I saw Mr. Sachs at Mr. Kelso's office late that evening.

By the Court:

Q. What day was that?

A. Friday evening, I should judge about half-past five. They said they would have the papers ready and I was anxious to go home and went to Mr. Kelso's office to see whether they had the papers prepared.

Q. Were the papers being prepared then?

A. Yes sir.

Q. What papers?

A. The papers in regard to retaking the property.

Q. Retaking possession from Mr. Connor?

A. Yes sir.

Q. Do you know what papers were being prepared?

A. No sir, not at that time.

Q. Who were preparing those papers?

A. I could not say.

Q. Who were there?

A. Mr. Kelso and Mr. Sachs.

Q. By Mr. Hester: Did they have a stenographer?

A. Mr. Kelso had, but I did not notice whether she was working on the papers or not.

Q. Had they been prepared or finished when you got there?

A. No sir.

Q. Do you wait for sometime for them?

A. I think I waited some few minutes, fifteen or twenty minutes.

Q. You were there I suppose for the purpose of signing the order?

A. Yes sir.

Q. While you were there state whether you signed the order?

A. Not there.

Q. Where was the order signed?

A. At the court house.

Q. Did Mr. Sachs, Mr. Kelso and yourself then go back to the court house?

A. I would not be positive about that whether they went back with me or not. I do not think they got all the papers done. I know I came back after supper for the purpose of signing some of the papers they had not prepared.

Q. What time was that?

A. I think about seven o'clock.

Q. Who was there at your office at that time?

A. That was not in my office. It was in the clerk's office.

Q. Who was in the clerk's office?

A. The deputy clerk was there and later I think Mr. Kelso came in.

Q. Was Mr. Sachs there that evening?

A. No sir, I think not. I do not remember of seeing Mr. Sachs there.

By the court:

Q. After supper?

A. No sir.

By Mr. Hester:

Q. Did you remain there any longer than long enough to sign the order.

A. I was only there a short time.

Q. Did you remain until after the property was taken?

A. Yes I think I did.

Q. To whom was the writ of resitution or whatever it was delivered?

A. To the sheriff, I think.

Q. Mr. Morris?

A. Yes sir.

Q. Do you know whether he came back to the court-house in regard to that matter that evening?

A. I am inclined to think he did.

Q. For what purpose if you know?

A. He came back to report that Mr. Connor would not turn the property over, I suppose, I did not know what his purpose was.

Q. What did he say or do?

A. I did not hear him say anything. I know that Mr. Kelso reported the fact to me that Mr. Connor refused to turn the property over, and then I made the order directing the sheriff to take it.

Q. Did you talk with Mr. Morris the sheriff?

A. I don't think I did.

Q. You made the order directing the sheriff to take it?

A. Yes sir.

Q. Did he come back after that?

A. Yes sir.

Q. How long afterwards?

A. Probably thirty minutes.

Q. For what purpose did he come back or what did he say when he did come back?

A. I think he stated that he had taken possession of the property but that there was some one in the plant yet.

Q. Did he tell you who it was, or what kind of an officer?

A. No sir, I don't think he stated that, except as I gathered from what he said that it was a watchman.

Q. Of whom?

A. Of Mr. Connor.

Q. He said that Mr. Connor's watchman was in charge?

A. That is the way I understood it.

Q. In possession of the plant. Did he get any further instructions?

A. Yes sir.

Q. What was said in regard to that?

A. Either myself or Mr. Kelso told him he would have to have everyone out of there that was in there before the court could turn it over to Mr. Kelso?

Q. What directions did he get in regard to obtaining complete possession of it. I think that was all that was said.

A. Yes sir.

Q. He left then?

A. Yes sir.

Q. Did he return again?

A. I don't remember.

Q. Do you know whether he did deliver complete possession of the property to Mr. Kelso?

A. I don't know about that.

Q. Do you know anything about the insolvency of M. Zier and Company previous to the complaint for a receivership being filed by Ryerson & Son?

A. No sir I did not.

Q. Did you know of any payments of money that had been made by—

Mr. Miller: I cannot see how his knowledge is competent.

The Court: I am not so sure that it is, Mr. Miller. Go on something else.

Q. You have related about all the steps that occur up to the time that this property was delivered by the sheriff to Mr. Kelso under the writ issued from your court.

A. As far as I recall it now.

Q. Do you remember when the citations were served in this case on the parties there in Floyd County, do you remember what date that was?

A. I think the citation was on the New Albany Trust Co —I know Mr. Watts was served on the 30th.

Q. I made the citations issued by this Court.

A. I think that was on Saturday evening.

Q. Did you have any further conference with these gentlemen after that?

The Court: What gentlemen?

Mr. Hester: Mr. Watts, Mr. Sachs and Mr. Kelso.

A. Yes, on Sunday morning.

Q. Where was that conference had?

A. At Mr. Kelso's office.

Q. By what arrangement, if you know?

A. Who notified—

The Court: No matter about that. Come to the meeting.

Q. I would like to know how they came to be there?

A. I think they were notified by telephone.

Q. What was said at that meeting?

A. The subject of that meeting was with reference to preparing a response for all the parties cited by this Court.

By the Court:

Q. Who was present?

A. Mr. Watts was there, and Mr. Sachs was there and Mr. Kelso was there and I was there.

Q. What did Mr. Sachs and Mr. Watts say about responses and appearing here?

A. I think, my recollection of it is, they said they would prepare the responses and that they would all appear here without reference to the manner of service, as to Mr. Sachs and Mr. Watts. They had not been served at that time.

Mr. Miller:

Q. This is on Sunday?

A. Yes sir.

By Mr. Hester:

Q. Was anything said about who should prepare the responses, or did he say about that?

A. I can not say as to that.

Q. What time did you separate that Sunday morning?

A. We were there an hour or an hour and a quarter or something like that.

Q. Did you arrange for another meeting next day?

A. Yes sir, Mr. Kelso and Mr. Sachs and Mr. Watts arranged to go to Mr. Sachs' office next morning to draw the responses.

By the Court:

Q. Where?

A. At Mr. Sachs' office in Louisville.

By Mr. Hester:

Q. Were you present at that meeting?

A. I went to Mr. Sachs' office in the afternoon, Monday afternoon.

Q. Who was there then?

A. Mr. Sachs and Mr. Kelso. Neither of them was at Mr. Sachs' office when I went in. They were at lunch as I was informed.

Q. They afterwards came in and you four were at that meeting?

A. Mr. Watts came in response to a telephone message from Mr. Sachs or one of Mr. Sachs' brothers.

Q. What was done on that Monday afternoon about preparing the responses.

A. Nothing except a discussion of the law.

Q. Were the responses prepared?

A. They were not.

Q. Was anything said by Mr. Kelso in regard to these gentlemen furnishing money to carry on this Receivership that he was involved in?

A. Yes, sir.

Q. What was that?

A. Mr. Kelso wanted to know late in the afternoon about four o'clock after stating the agreement that had been made originally, who was going to bear the expenses of it and Mr. Sachs said he did not think any lawyer ought to bear expenses of that kind.

Q. By the Court. Did I understand you to testify awhile ago that Mr. Sachs originally agreed to bear those expenses?

A. Yes, sir.

Q. By Mr. Hester. Was anything said by any of the other parties, either Watts or Kelso, further about the expenses of the Receivership?

A. Not that I recall now.

Q. Do you recall whether or not they reached a definite determination or anything was said about their determination not to pay anything or furnish any money or funds?

A. I think I have stated all that I recollect that occurred on that subject. Mr. Kelso then went to the telegraph office to telegraph to some attorney to appear for him.

Q. How much longer did you remain in Mr. Sachs' office that afternoon?

A. Probably a half an hour.

Q. Then you went back to New Albany?

A. Yes, sir—Mr. Kelso and I went back.

Q. You were not present in Louisville at any other meeting after that?

A. No sir.

Q. By the Court: What was said at that time about them coming up here with Mr. Kelso and the other persons cited on Monday afternoon—what did Mr. Watts and Mr. Sachs say about that if anything?

A. I recollect that Mr. Sachs said he would not come here, that he would sooner go to Jamaica or some place—

By the Court: Speak that out so that I can hear it.

A. He said that he would not come here, that he would sooner go to Jamaica or California rather than testify against his friend Watts, as I remember.

Q. By Mr. Hester: Was that stated before Mr. Kelso and Mr. Watts?

A. Yes sir.

Q. What did Mr. Watts say in answer to that?

A. I don't know that Mr. Watts said anything in answer to it.

Q. Is that the substance of that conversation that afternoon?

A. As near as I can recall.

Q. By Mr. Miller: Was that Monday afternoon?

A. Yes sir.

Q. By Mr. Hester: What, if anything, did Mr. Watts say about coming to Indianapolis?

A. Mr. Watts talked about whether he ought to come. He said he felt like he ought to come and yet he said he did not want to do anything in view of what had occurred on the 16th and 17th; that he did not want to do anything that would jeopardize the officers cited to appear and Mr. Kelso.

Q. That was in connection with his coming up here that he said that?

A. Yes sir.

Q. Was Mr. Watts talking about coming to Indianapolis then as one of the attorneys for Mr. Kelso or these other officers or individually in answer to the citation directed against him?

A. No sir; he was talking with reference to coming in regard to the citation that had been issued against him and Mr. Sachs.

By the Court:

Q. You did not appoint Mr. Kelso as receiver until after the Trust Company had turned the property over to Mr. Connor, the receiver of this Court?

A. No sir.

Q. And you appointed him receiver at that time for the purpose of retaking the property from the receiver of this Court?

A. That was my understanding of it.

Q. You did that upon the advice and suggestion of whom?

A. On the advice of Mr. Sachs and on the information I had in regard to the law.

Q. What did Mr. Watts have to do with that proposition?

A. I would not state that he had anything to do except that agreement in regard to taking care of the expenses.

CROSS-EXAMINED BY MR. FAIRLEIGH.

Q. Will you be good enough to tell the court when you first saw Mr. Sachs and Mr. Watts after their return from Indianapolis after their appearance here before the Judge of this court on the 16th and 17th—I mean after the appearance of Mr. Watts and Mr. Jewett.

A. Two o'clock of the afternoon of the 18th.

Q. At that meeting Mr. Watts had prepared a brown paper statement of what had occurred here before Judge Anderson?

A. Yes sir.

Q. Mr. Jewett appeared also at the same time?

A. Yes sir.

Q. He had no statement prepared?

A. Not at that time.

Q. It was understood that next morning the statement of Mr. Watts as attorney for the New Albany Trust Company as receiver, and the statement of the New Albany Trust Company Receiver would both be filed before you? was that the idea?

A. It was understood and stated by Mr. Jewett that afternoon that he thought he would be able to get the paper of the Trust Company ready that afternoon as I recollect it.

Q. They were not filed that afternoon?

A. I could not state as to the actual filing. I know the Trust Company did not get theirs ready until the next morning.

Q. They were both filed formally before you the next morning.

A. I would not state positively whether Mr. Watts, was filed Wednesday afternoon or Thursday morning?

Q. The record discloses the fact that it was filed Thursday morning?

A. Whatever it is.

Q. What time did you see Mr. Watts and Mr. Sachs on Thursday morning?

A. It was about 9.30, I guess along there, I don't remember the exact time.

Q. Had you seen Mr. Kelso before you saw them that morning?

A. Yes, sir.

Q. Had you telephoned Mr. Kelso the evening before that you wanted to see him next morning?

A. Yes, sir.

Q. Did Mr. Sachs and Mr. Watts know that you were going to telephone to Mr. Kelso that evening before they left?

A. No, sir; they did not.

Q. You telephoned to Mr. Kelso on your own motion?

A. Yes, sir.

Q. Without any consultation with them or either of them about that fact?

A. Yes, sir.

Q. What did you want to see Kelso for?

A. I wanted to talk with him with reference to whether the Trust Company ought to be permitted to resign or the property ought to be turned over. He was a stockholder in the New Albany Trust Company at that time.

Q. Accordingly you saw him the next morning, which was Thursday morning, at his office about eight o'clock?

A. Yes, sir.

Q. You did talk with him about that subject?

A. Yes, sir.

Q. What did he tell you?

A. He said he would take the Receivership.

Q. It was arranged between you and Mr. Kelso alone?

A. So far as I know.

Q. That determination was made by you at that time?

A. Yes, sir.

Q. That was your conclusion of the whole matter?

A. As I understood it.

Q. When Watts and Sachs arrived Thursday morning that conclusion had been reached by you independently of them?

A. Yes, sir.

Q. They had no connection with the formation of that judgment, had they?

A. Not that I know of.

Q. Had they suggested or advised in any way the appointment of Mr. Kelso?

A. No sir, not to me.

Q. By the Court. What do you mean by that that they had not advised Kelso as distinguished from any other person or do you mean to swear that they did not advise the appointment of any receiver at all?

A. I mean that they did not tell me that they wanted Kelso appointed Receiver.

Q. By Mr. Fairleigh. Or anybody else?

A. So far as I know.

Q. They did not suggest the name of anybody?

A. No sir.

Q. Let us get at that so as to have it clear. Up to that time had Mr. Watts or Mr. Sachs in any way advised the appointment of another Receiver?

A. Up to what time do you refer?

Q. Up to the time you went to Kelso's office on the morning of Thursday?

A. No sir.

Q. That was an independent judgment reached by you?

A. Yes sir.

Q. How long did you stay with Mr. Kelso that morning?

A. Only a few minutes. I don't know just how long.

Q. Did he come over to your office that morning afterwards?

A. Yes sir.

Q. Did he arrive there before or after Mr. Sachs and Mr. Watts arrived there?

A. My recollection is he came before.

Q. Was he with you when Mr. Sachs and Mr. Watts came into your office?

A. That is my recollection.

Q. Had you and Mr. Kelso been discussing this matter there in your office before the arrival of Mr. Sachs and Mr. Watts?

A. I would not state whether we had any discussion of it there or not.

Q. The thing had been concluded, you determined what to do?

A. So understood it.

Q. What action was taken by you on those petitions up to that time?

A. I think I stated that I did not think the property ought to be turned over and that they might put in the response what they desired to but that I would neither expunge the record that was made on the 14th nor would I permit the Trust Company to resign.

Q. What was the purpose of expunging the record or certain parts of it—was any statement made in open court about that?

A. Yes, sir—Mr. Watts stated Wednesday afternoon that he had promished to advise the turning over of the property. I am not entirely clear but I think he said he had promised to have the record made on the 14th of February expunged.

By the Court. I want to understand that. What was said about expunging the record?

A. I say am not entirely clear on that.

Q. I want you to be clear. I know what the fact is and I want to know what he said about it?

A. I know this: I want the entire record made—the order made on the 14th of February expunged from the record.

Q. Did he tell you that this Court had asked that to be done?

A. As I say I would not state positively about that.

Q. By Mr. Fairleigh. How long did Mr. Sachs and Mr. Watts stay in your office after that matter had been determined?

A. What matter do you refer to?

Q. After you expressed disapprobation of what they had done?

A. As I stated in the direct examination until I think something like 11 o'clock or along there. I am not sure.

Q. Was there anything said there about the appointment of Mr. Kelso as Receiver after that time?

A. I could not state.

Q. You do not remember?

A. No, sir.

Q. They left your office about 11 o'clock as you remember it?

A. Sometime along there, I think.

Q. Did they afterwards return to your office during that day as you remember?

A. Mr. Sachs did but I don't know for sure whether Mr. Watts did or not.

Q. This is Thursday: Did Mr. Sachs return Thursday to your office?

A. Yes—that is my recollection.

Q. Do you know for what purpose?

A. I could not state the purpose.

Q. Have you any recollection at all of what he said or did after he returned to your office?

A. I think there was some talk between him and Mr. Kelso as to the situation—as to the citation that was to be issued against the Trust Company.

Q. Was Mr. Kelso there?

A. I think he was.

Q. Do you know how long they were at your office that afternoon?

A. I could not state that.

Q. They returned to New Albany on Friday morning and came to your office?

A. Yes, sir.

Q. What was the purpose of their coming there that morning, do you remember?

A. No, sir—I could not state the purpose.

Q. Do you remember of telephoning to Mr. Sachs on Thursday evening and asking him and Mr. Watts to come over to your court or office on Friday morning?

A. No, sir; I have no recollection whatever of it.

Q. You have no recollection whether you did or did not?

A. I don't think I did.

Q. They did come to your office on Friday morning as I understand.

A. Yes, sir.

Q. About what time, do you remember?

A. About 10 o'clock.

Q. Was Mr. Kelso there when they came?

A. I don't know whether he was or not. If he was not there, then he came in shortly afterwards. I know that Mr. Kelso was there at some time during a part of the morning.

Q. When was the order entered appointing Mr. Kelso Receiver—was that on Friday?

A. I don't know whether it was Thursday afternoon or Friday. I could not state but I am rather of the impression that it was on Thursday.

Q. What is the date of the appointment of Mr. Kelso?

By the Court: Friday the 20th.

A. Yes; I think that is right.

By Mr. LaFollette: Yes it was on the 20th that his bond was filed.

A. That is the date of the appointment.

Q. When did you tell Mr. Watts and Sachs, if you told them at all that you had determined to appoint Mr. Kelso Receiver?

A. I don't know that I have stated that to them at all. I may have done so.

Q. Who drew the order appointing Mr. Kelso Receiver?

A. I could not state that.

Q. Was it drawn in your presence?

A. I do not know that.

Q. What proceedings were in contemplation by anybody at the time Mr. Kelso was appointed? What proceedings were in contemplation to be taken by the Receiver?

A. He was to take the property.

Q. How?

A. How?

Q. Yes. Was the method of taking it discussed by anybody?

A. I think the method was discussed between Mr. Kelso and Mr. Sachs.

Q. Was there anything said about intervening in this Court by Mr. Kelso the Receiver?

A. Not that I recall now.

Q. Was any discussion had about appearing in this court and filing an intervening petition in the bankruptcy case and submitting to this court the question of where the possession of the property rightfully belonged?

A. There may have been. I won't state positively.

By the Court: Of course, a great many things may have been?

A. I say that I cannot state as to that.

Q. When was it determined to issue a writ?

A. On Friday.

Q. How late?

A. I don't know whether that was in the morning or the afternoon.

Q. Was it not late in the afternoon, as you remember it?

A. It was not late in the afternoon. I think it was done in my presence early in the afternoon.

Q. Kelso by order the of appointment was directed to demand of Mr. Connor, the Receiver, possession of this property of M. Zier & Co. and of the New Albany Trust Co. also?

A. Yes, sir.

Q. And upon default on the part of either, Kelso was directed to report that fact to the Court?

A. Yes, sir.

Q. The order of appointment went no farther than that?

A. That is my recollection.

Q. The order for the issuance of a writ was made thereafter therefore?

A. Yes, sir.

Q. Now who was present when that order was determined upon?

A. I could not state that.

Q. Is it not true that neither Watts nor Sachs was present?

A. My recollection is that Sachs was there with Mr. Kelso and was advising the court. That is all I can state as to that.

Q. At that time?

A. Yes, sir.

By the Court: With reference to that matter?

A. Yes, sir.

Q. Watts was not present as you remember?

A. I would not state that he was there. He may have been there. He was in New Albany.

Q. Are you certain that Mr. Sachs was there?

A. When that matter was being discussed?

Q. After Kelso reported back that he could not obtain the possession of the property?

A. I do not know whether he was when he reported back that fact but the course that was pursued, I know that Mr. Sachs knew and advised with reference to that.

Q. You are not certain that Sachs was there at the time Kelso reported back to you that the demand had been refused?

A. No sir—I could not state that.

Q. Is it not your best impression that ye was not there?

A. I could not state; I do not know.

Q. That was late in the afternoon, did you say?

A. I think it was.

Q. Could you now say how late it was, whether it was five or six o'clock?

A. No, I could not. It was somewhere along there, I think.

Q. Nevertheless upon that report made by Mr. Kelso that he was not able to obtain the property from the New Albany Trust Co. or Connor you did direct the entry of any order directing the writ to be issued and given to the sheriff?

A. Yes, sir.

Q. Was that put in the hands of the Sheriff?

A. Yes sir.

Q. By whom?

A. I do not know who handed it to him. The writ was prepared. Whether Mr. Kelso delivered it in person or whether the Clerk carried it to him, I do not know.

Q. By the Court: Did I understand you to say that you entered the order directing the sheriff to do that?

A. Yes.

Q. Of record?

A. Yes sir.

Q. Was the court in session?

A. I signed the order in vacation as we always do?

Q. It was not a court order?

A. It was in vacation.

Q. You were not stiting as the Floyd Circuit Court?

A. As the Judge of the Floyd Circuit Court.

Q. It was during vacation and you were not sitting—

A. The court was not in session, no sir.

Q. And under that writ the property was taken as you have heretofore related and turned over to Mr. Kelso?

A. Yes sir.

Q. By Mr. Fairleigh: Did Mr. Kelso report back to you in writing?

A. Yes sir.

Q. That he had been unable to get possession of the property?

A. Yes sir.

Q. Do you know who prepared that paper or writ?

A. I don't know who prepared it.

Q. Was it in typewriting, do you remember?

A. That is my recollection.

Q. Signed by Mr. Kelso?

A. Yes sir.

Q. You have spoken about some agreement to pay costs and expenses. What day was that conversation in which that occured?

A. On Thursday morning.

Q. What was the scope and real purpose of that? I have no doubt that the court would like to know that?

A. That was the condition on which Mr. Kelso stated to them that he would take the Receivership.

Q. I understood you to say that he had agreed to take it you had agreed upon that before they came over?

A. That is true.

Q. That was an independent determination of yours before they arrived on Thursday morning?

A. Yes, sir.

Q. How did this discussion about expenses come up—what induced it?

A. I cannot state except as I recall it. Kelso asked Watts and Sachs if he took the Receivership if they would protect him against any costs.

Q. What was he to do that would incur costs: that is what I want to get at. What costs were in the minds of the parties at the time?

A. I do not know what he said as to that.

Q. Do you remember of anything being said about filing pleadings in this court and court costs and all that sort of thing?

A. No sir—I do not.

Q. You would not undertake to say what the scope of that agreement to pay costs was?

A. No, sir—I do not recall now.

Q. It was a casual conversation between the parties?

A. No, sir; it was a question of whether Kelso would take the Receivership.

Q. The conversation was after he had agreed to take it and after you had determined to appoint him?

A. Yes, sir. In that connection, I think it is proper to say that my recollection now is that Kelso stated to me—

By Mr. Fairleigh: In the presence of Mr. Watts and Mr. Sachs?

By the Court: Finish you statement anyhow?

A. That that was the condition on which he would take it.

Q. By Mr. Kealing: At his office when you first talked about it?

A. Yes, sir.

Q. By Mr. Hester: What would be the condition?

A. That he was to be at no expense.

By Mr. Fairleigh: Kelso said that he would not undertake it except that he would be guaranteed against any cost personal to himself?

A. Yes, sir.

Q. That was on the information that all of the property had passed out of the hands of the Receiver?

A. Yes, sir.

Q. And he had no funds to pay costs?

A. Yes, sir.

Q. Was there any statement about what amount of costs there would be?

A. I do not recall it; there may have been.

Q. Who was the attorney for that Inland Steel Company in that Ryerson litigation down in the Floyd Circuit Court?

A. Hoerter and Hester.

Q. Who filed the petition in bankruptcy?

A. Mr. Hester filed the petition. I do not know whose name appears on it as attorney.

Q. The petition in involuntary bankruptcy on behalf of the Inland Steel Company Mr. Hester filed?

A. Yes, sir; he filed it.

Mr. Fairleigh: That is a record fact?

The Court: Yes; and I do not think it is material.

Q. Who filed the intervening petition of Connor Receiver of this court in the suit down in the Floyd Circuit Court as the attorney for Mr. Connor?

A. Mr. George Hester filed the petition.

Cross-examined by Mr. Smith for defendant Sachs.

Q. At the time you say these parties were over there on Wednesday afternoon how long did they remain—Sachs and Watts?

A. Probably a little more than an hour. Something like that.

Q. Was Mr. Kelso in your office with them during the entire time they were there?

A. He was not there at all Wednesday afternoon.

Q. Kelso was not at your office at all?

A. No, sir.

Q. Did you talk with Watts and Sachs with reference to this trouble they had had up here?

A. I think that was stated when Watts and Jewett both stated what promise they had made to turn the property over.

Q. Jewett did not undertake to make any report on Thursday?

A. He said that he would, that he could get it ready by five o'clock.

Q. They did not remain there until five o'clock to see whether Jewett would bring the report?

A. I think Mr. Jewett informed me that he could not get it ready later on. They did not wait.

Q. You took no action on that day did you?

A. None except to say to Mr. Jewett not to turn the property over until the next morning until I could think of it.

Q. You took no action in regard to any matter relating to Watts and Sachs upon that Wednesday?

A. No, sir.

Q. Did you not tell Watts and Sachs or both of them at the time they left there on Wednesday afternoon that you wanted a meeting of all of the attorneys on Thursday morning and for them to go by and tell Kelso to have them there?

A. No, sir.

Q. You say you did not do that?

A. No, sir.

Q. You are quite sure about that?

A. Yes, sir; I am quite sure.

Q. You are sure you did not tell them to go by and tell Kelso to have the other attorneys there Wednesday morning?

A. I certainly did not?

Q. Do you know the occasion of their returning Thursday morning?

A. No, sir—I would not state as to that positively.

Q. Don't you know that you instructed them on that Wednesday afternoon to return Thursday morning?

A. I do not know whether I instructed them to return. I know that I stated that I would determine the matter in the morning at nine o'clock as to what action I would take or what conclusion I would come to as to whether the Trust Company should turn over the property.

Q. Did you not tell them you would make an engagement for Kelso to come over and see those two next morning?

A. No.

Q. You did make an engagement with Mr. Kelso to come to your office at eight o'clock?

A. No sir; I made an engagement to meet him at his office.

Q. That was an hour before nine o'clock when you said you would report what action you would take?

A. Yes, sir.

Q. You didn't see these parties any more after they left your office at an hour after three until they returned next morning about nine-thirty?

A. I think not.

Q. That was on Thursday morning that they returned?

A. Yes, sir.

Q. Mr. Kelso was there at the time they came in?

A. That is my recollection.

Q. Did I understand you at that time to say that there had been nothing said between you and Mr. Sachs and Mr. Watts in regard to the removal of the trust company and the appointment of another receiver?

A. That is my recollection.

Q. You had agreed and Kelso had accepted the appointment, as you say now, conditionally that the costs were arranged?

A. Yes sir?

Q. When was the conversation in regard to the arrangement about costs first mentioned with reference to the time of their coming next morning—Thursday morning?

A. After I had stated to the trust company and after I had stated to Mr. Watts that I would not reply to the requests that they asked of me.

Q. That was the next thing in order, the question of Mr. Kelso being secured as against any costs that he might incur?

A. Yes sir.

Q. Then Mr. Kelso up that time hadn't said to Mr. Sachs that I will employ you as attorney had he?

A. I think not.

Q. What time of the day did that occur with reference to the time that they got there in the morning?

A. It was a very short time, for there was a discussion as to Mr. Kelso's taking the receivership and Mr. Sachs to act as Kr. Kelso's attorney.

Q. Who was present, judge, at the time Mr. Sachs made that agreement with Mr. Kelso?

A. Mr. Watts, Mr. Sachs, Mr. Kelso and myself.

Q. Just you four?

A. That is the way I recall it now.

Q. And that was in your office at the court house?

A. Yes sir.

Q. That was a short while after they came over there and after you had stated to them that Mr. Kelso had agreed to accept the appointment?

A. I don't know whether I stated it to them or not, or whether that was understood; I don't know about that.

Q. You had no conversation with them by which they could arrive at that understanding, that is the understanding by which you were to—

A. (Interrupting) I don't know what their understanding with Mr. Kelso was, or whether they had any.

Q. Had they had any conference with Mr. Kelso since they left your office that afternoon at all?

A. I don't recall now whether they did or didn't.

Q. What time did they leave on that Thursday, Mr. Sachs and Mr. Watts?

A. As I stated, I think Mr. Sachs and Mr. Kelso were there, it was something like a little after 11, along there; I don't know just when Mr. Watts left, I couldn't state; Mr. Sachs came back in the afternoon, and whether Mr. Watts came back I couldn't state; they may have done so.

Q. You were very angry, judge, at the time you heard of the action of the court here were you not?

A. No sir; I wouldn't state that I was angry.

Q. Well you were very much grieved over the turn that matters had taken?

A. I felt that the trust company, after talking with Mr Sachs about the matter, and after the discussion on Wednesday afternoon, and after the examination of the authorities that I had, I concluded that the trust company hadn't treated me right in the matter, and that Mr. Watts hadn't.

Q. Well you knew Mr. Sachs was Mr. Watts's friend did you not?

A. No I knew nothing about the relations between Mr. Sachs and Mr. Watts previous to that time.

Q. How long had you known Mr. Sachs previous to that time?

A. I met Mr. Sachs for the first time on Thursday morning, the 19th, I think it was; no on Wednesday afternoon.

Q. Wednesday afternoon?

A. Yes sir.

Q. Didn't they leave there Wednesday afternoon, and come back there Friday morning?

A. No sir.

Q. Thursday morning, I mean?

A. Yes sir that is correct.

Q. And was Mr. Jewett's report filed on Thursday at all?

A. You mean the request to be permitted to resign the trust?

Q. No sir I am talking now of his report as to the assets that came to his hands and the disposition of it

A. No that wasn't filed until later, I think it was Thursday evening or Friday.

Q. Wasn't that the report that you were going to require of them, as you say, on Wednesday afternoon, that he should make a statement of the matter and make a report before you took any action in the case? Wasn't that the report that you were looking to be filed?

A. No I expected a report asking permission to resign the trust; make a report and resign the trust.

Q. Well on Thursday didn't you tell him that you would withhold any action in the matter until after he had filed his report, and that you would decline to remove him or appoint anyone else until a report was made of the assets and liabilities still in his hands?

A. I don't think I made that statement because after I investigated the matter from what Mr. Watts and Mr. Sachs had stated I concluded to remove them.

Q. Didn't Mr. Jewett bring you a paper in accordance with your request, didn't he bring you a paper with figures on it, and didn't you say it was so indefinite that you couldn't approve it, and didn't he tell you the reason why it was so was that one of the clerks undertook to furnish it and didn't know very much about it?

A. He made some statement of that kind when he filed a little paper showing the amount received and expended.

Q. That was on Thursday, was it not?

A. I think that was Friday evening late.

Q. He hadn't turned over the property up to that time had he?

A. Yes sir.

Q. What time was the property turned over?

A. I couldn't state; I was informed it was turned over Thursday morning about the time—

Q. (Interrupting) Thursday morning?

A. (Continuing) They were in the office.

Q. Wasn't Jewett in there Thursday, and wasn't he asked the question in regard to whether he had turned the property over?

A. Yes sir.

Q. When did he answer?

A. I don't think he answered at all that morning, as I recall it.

Q. Colonel Jewett, I mean.

A. Yes sir, he may have done so; I wouldnt' say positively about that.

Q. I believe you said awhile ago in your examination in chief that he didn't answer the question at all, but said he was going to do it.

A. As I recollected he said he didn't want to be interrupted.

Q. You have given your evidence before as a witness on the trial of the case against Charles D. Kelso and others in this court?

A. Yes sir.

Q. I will ask you in response to a question asked you upon that examination as a witness if you didn't say: "Yes; Yes sir, Mr. Jewett—Colonel Jewett, Colonel Jewett said on behalf of the trust company that the trust company had decided to turn the property over to Mr. Connor, receiver, and that he was asked there, or some question was asked him as to whether the property had been turned over, and he said he didn't know but it probably had as Mr. Connor was there at the trust company office demanding the keys."

A. I may have made that statement, and I would not say now that is I wouldn't say positively whether he did state it or not. I know he said he didn't want to be interrupted, and when Colonel Jewett went out of the office Mr. Sachs said the property had been turned over.

Q. On Friday, judge Mr. Sachs and Mr. Watts came over there about nine-thirty in the morning was it?

A. I think it was about ten o'clock.

Q. They remained there that day?

A. Mr. Sachs was in my office with Mr. Kelso—I don't know how long Mr. Watts remained.

Q. Were they not there the forenoon and afternoon too?

A. Mr. Sachs was, and I am not sure but that Mr. Watts came in during the afternoon.

Q. That was the day on which the proce s was issued for reclaiming the property?

A. Yes sir.

Q. Now they were there about ten o'clock, they remained up to the lunch hour; did they go out for lunch?

A. Well they left my office.

Q. Did they leave together?

A. Who do you refer to as they.

Q. Mr. Watts and Mr. Sachs; I am speaking definitely now of those two.

A. I think Mr. Sachs and Mr. Kelso left together but whether Mr. Watts was there and went with them I don't know.

Q. Do you remember whether Mr. Watts went out to lunch?

A. No I don't know.

Q. Did you go to lunch that day?

A. Yes sir.

Q. They were back in the office that afternoon?

A. Mr. Sachs was there, Mr. Kelso was there, and Mr. Watts may have been.

Q. What time did they come back, Judge?

A. They came back about two o'clock.

Q. How long did they remain?

A. I don't think they stayed very long in the afternoon; then Mr. Sachs said Mr. Kelso went to Mr. Kelso's office to prepare the papers.

Q. Judge, was Mr. Joe Sachs there on Friday afternoon?

A. I think he was.

Q. Was he there on this business or representing some other interests?

A. Mr. Joe Sachs came there, said something to me in regard to a contract with a party in Louisville that he and Mr. Hester represented; that an order had been made by the Floyd Circuit Court for the completion of it, and he was wanting something done. The thing stopped and he wanted something done with reference to the completion of that contract.

Q. Mr. Sachs was there in the afternoon, Joe Sachs? He wasn't there in the morning was he?

A. I think it was in the afternoon.

Q. Do you remember what hour he came in the afternoon?

A. No sir I do not.

Q. Wasn't it about two or three o'clock?

A. It may have been; I couldn't say about the time.

Q. In the morning you say when Mr. Kelso and D. A. Sachs left the office they went to Kelso's office; you don't know that they went to that office, do you, judge?

A. In the morning in the afternoon? I know they said that was where they were going.

Q. In the afternoon?

A. Yes sir.

Q. You left the office at the time or before they did, did you not?

A. In the afternoon?

Q. Yes.

A. No I remained at the office, I think.

Q. Sir?

A. I think I remained at the office.

Q. Didn't you transact the business for Mr. Joe Sachs, or at least talk with him in regard to the matter on that afternoon and then did he not invite you together with the entire party of gentlemen to go out for some refreshments?

A. No, I think not.

Q. Are you certain that you did not?

A. I am not certain about it.

The Court: I don't think it is material.

Mr. Smith: I want to locate—or show that these men were not there; I am trying to show that they were not in consultation with one another or with the Judge on that afternoon after three o'clock.

The Court: Well go ahead.

Q. I will ask you, Judge, if you and Mr. Watts and Mr. Joe Sachs didn't go over to the cafe over there on the corner and go in the back room and stay there until some five or six o'clock in the afternoon?

A. No I think we were in there but not that late; only a short time.

Q. You all sat in there and had refreshments two or three or four times, didn't you?

A. Something like that, yes sir.

Q. You then, now, do remember that you and Mr. Joe Sachs and Mr. Watts went out of your private office at about three o'clock and went over into this place?

A. I don't know whether we went together; I know I was there when they were there; that is all I can say about that.

Q. Judge, I would like to refresh you recollection, if possible, about this matter because I think it is important. Don't you remember Joe Sachs extended to you an invitation, and that you went on the invitation?

A. I may have done so; I don't know.

Q. Don't you remember that Mr. Watts went with you on that invitation?

A. I think Mr. Watts was there, but as I said whether we were together or not I don't know.

Q. Now as a matter of fact, Judge, to refresh your recollection in regard to the matter, don't you remember that about that time that that matter was mentioned you had given Mr. Kelso instructions to draw up orders removing the New Albany Trust Company as receiver and of appointing himself as receiver and to get up the order on his bond, and don't you know at that time, he on that occasion declined Mr. Joe Sachs invitation to go out with him because you had told him to go and draw those orders, and that Mr. Kelso didn't go with you?

A. No, I don't know about that.

Q. Hadn't you instructed him to go to his office and draw those orders?

A. It was understood that afternoon after the talk between Mr. Sachs and Mr. Kelso that they were top repare the orders that afternoon.

Q. Didn't Mr. Kelso leave your office about the time that you gentlemen left to go over to this place?

A. I don't know about that whether he did or not.

Q. Now I will ask you to refresh your recollection in regard to the matter a little further, is it not a fact that Mr. Dave Sachs,—the request having been made to the party—and he remaining seated, didn't his brother turn to him and ask him too, and he replied that he was not feeling well, and he was going to wait there until you gentlemen returned?

A. I think he stated that.

Q. You think Mr. Dave Sachs stated that?

A. I think so. But he didn't wait there.

Q. He said, though, that he was going to wait in your office?

A. I think so.

Q. Then you and Mr. Sachs—Mr. Joe Sachs and Mr. Watts—You remember now that at the time the invitation was extended that Mr. D. A. Sachs declined it and that you three gentlemen went out?

A. I don't know whether I went with them or not.

Q. How late did you remain there at that place? That cafe we will call it?

A. Oh I was there half an hour, something like that.

Q. Didn't you remain there till five, Judge?

A. I don't think it was that late. I am quite sure it was not.

Q. Didn't you remain there, and didn't Mr. Jewett call you, and didn't you go back and sit down and after you all had three or four drinks, didn't you leave about dark, saying that you would have to go home?

A. No sir; I didn't have any conversation with Mr. Jewett that afternoon.

Mr. Hester: Which Jewett did you refer to?

Mr. Smith: Colonel Jewett.

Q. You say you don't remember about that?

A. No, I know I didn't have any conversation with Colonel Jewett.

Q. Now did Mr. Watts or Mr. Joe Sachs return to your room after you all broke up the party there at that place?

A. No, I think not.

Q. Did you see Mr. Watts or Mr. Joe Sachs after you left that place any more that day?

A. I think not.

Q. Did you see Mr. D. A. Sachs after you left that place any more that day?

A. Yes sir, I saw him at Mr. Kelso's office.

Q. Now this is Friday, Judge, we are speaking of?

A. Yes, I know it is Friday.

Q. Did he go with you back to the court house from Kelso's office then?

A. I don't know whether he walked back to the court house or whether he caught a car there.

Q. The order hadn't been entered then, that is the refusal of Mr. Connor to surrender hadn't been entered upon the books before you left Kelso's office, had it?

A. No, I think not. No.

Q. Had Mr. Kelso reported to you that Mr. Connor had refused to surrender the property before you left? Had he made a report to you before you left Kelso's office?

A. No sir.

Q. Then the report must have been made to you after you last saw Mr. D. A. Sachs?

A. Yes sir.

Q. You didn't see Mr. Sachs any more after you got the report?

A. No.

Q. On that day?

A. No. I think not.

Q. Now, on Friday, Judge, while you were over there, is it not a fact that Mr. Dave Sachs said to you when the question came up as to the surrender of this property, and you gentlemen having ascertained the fact that the property had been surrendered, didn't Mr. Dave Sachs say to you at that time, "That ended it as far as this court is concerned," speaking of your court?

A. No, I don't think he said that.

Q. Didn't Mr. Sachs ask Mr. Kelso to take the phone there and find out if the property had been surrendered to the receiver of the Federal Court, and didn't Mr. Kelso respond that it has been surrendered, after phoning, and didn't Mr. Dave Sachs say at that time, "Gentlemen that ends the matter as far as this court is concerned, the property is in the hands of the Federal Court.

A. No, I don't recall any statement of that kind by Mr. Sachs.

Q. Didn't you at that time, Judge, say to Mr. Sachs, "No it doesn't; we have got a state statute; if we can't reach them under the federal statute, we have got a state statute"; and in response to that didn't Mr. Sachs state, "I know nothing about your statutes, but the property is surrendered, and you can go no further."

A. No sir, I never made such a statement as that in my life.

By the Court:

Q. Did Mr. Sachs make any such statement as that to you?

A. No sir.

By Mr. Smith.

Q. Didn't Mr. Kelso say then that there was a state statute, and that the property could be taken under the state statute?

A. No sir, I think not; if he did I didn't hear it.

Q. Then if there was any reference to the Indiana statute that authorized the reclaiming of the property you didn't hear it?

A. No.

Q. Judge, to refresh your recollection, perhaps it is a question that you have answered two or three times, but to refresh your recollection I want to ask you if Mr. Sachs didn't say to you at the same time that this state statute was mentioned and this entire matter was under discussion, didn't Mr. D. A. Sachs say to you, "You all had better abandon this entire matter because I tell you now if you interfere with the jurisdiction of the United States court you may as well call out your militia, because you are going to have trouble."

A. No, sir, he didn't state that.

Q. That wasn't mentioned at all?

A. No, sir.

Q. You were over, Judge, at Louisville on Monday; what was your object in going over there?

A. I went over there in regard to the responses that were to be prepared.

Q. In order to prepare the responses?

A. No, it was understood that the responses were to be prepared at Mr. Sachs' office on Monday; that was agreed on.

Q. We don't want understood or what was agreed on; what was said?

A. That is what they said on Sunday.

Q. What was said on Sunday?

A. That Mr. Kelso was to come to Mr. Sachs' office; I think Mr. Sachs' asked him to come to his office on Monday morning.

Q. Are you certain of that?

A. That is my recollection of it.

Q. Who asked you to come over?

A. I don't think anyone asked me to come over; the way I happened to go over there was the sheriff came to me during the morning and wanted to know about his response for himself and the deputy, and he said that he had thought that he would get an attorney at New Albany to represent him, and I told him that as I understood it Mr. Sachs and Mr. Watts were preparing the responses for all of them.

Q. Why did you go over there?

A. And I went over there to inform them of that fact, and I told the sheriff that as they had a copy of the records I would get them and return it to him that night so that he could hand it to his attorney at New Albany and have his response prepared.

Q. Judge, didn't you call up Mr. Sachs on Monday and tell him you would be over there Monday afternoon.

A. I did.

Q. And you went over on Monday afternoon, and hadn't the order of this court of February 17th been received at your city at that time?

A. What order do you mean?

Q. I mean the order of the 17th where it recites the entering of the appearance to the judge of this court in regard to the surrender of this property or the agreement to surrender; hadn't you seen the order, that entry of the 17th before you went over there?

A. Not before I went over. No sir.

Q. You saw it after you got over there?

A. Yes sir.

Q. Now didn't Mr. Sachs, in that interview in his office, in the presence of his two brothers, and in the presence of Mr. John Watts and W. W. Watts and Mr. Kelso, say to you gentlemen, when the order was read down there, that you had better go and make the best settlement you can; this is the first I have seen of this order or know of it, and I propose to quit the entire matter right here?

A. I think he said substantially that at that time.

Q. When was that?

A. That was on Monday afternoon.

Q. Didn't he say substantially the same to you on Friday when he was notified that the property was delivered up?

A. No sir.

Q. Wasn't that the time in the presence of those gentlemen that I have named, wasn't that the time that Mr. Kelso then said, "Why, gentlemen, I want to know who is going to pay the cost?"

A. I think that was stated.

Q. Didn't Mr. Kelso then say that Mr. Watts had agreed to pay the cost, and never mentioned Mr. Sachs's name?

A. No sir, he did not.

Q. He mentioned Mr. Sachs' name too did he?

A. Yes sir.

Q. It was in the presence of these gentlemen that I have named?

A. Well I wouldn't say now; Mr. Sachs' brothers were there a part of the time; Mr. Watts' brother was there a part of the time; whether they were there at the time that was stated, I wouldn't undertake to say.

Q. You were not preparing any responses there that day?

A. No sir.

Q. And Mr. Kelso immediately employed attorneys, or at least went out for the purpose of telegraphing to get other attorneys?

A. Yes sir, that is right.

Q. Judge, don't you remember that Mr. John Watts when this question of costs arose asked you whether or not his brother W. W. Watts had become involved in any way by any promise or obligation to be responsible for any costs whatever.

A. No sir, I don't recall any conversation of that kind.

Q. Not with Mr. John Watts?

A. No sir.

Q. You do not remember of his making any such request of you that he would like to know if there was any obligation of that kind?

A. No sir, I do not.

Q. Did you hear him make any such inquiry of Mr. Kelso?

A. Did I?

Q. Did you hear Mr. John Watts make any such inquiry of Mr. Kelso?

A. Not to my knowledge.

Q. Judge, to refresh your recollection about that matter, I will ask you if you didn't state when Mr. Kelso raised that question and stated that he couldn't pay any, that you had $1300 in court that could be used for that purpose?

A. No sir, I don't think I made that statement.

Q. Nine hundred then, instead of thirteen hundred, did you state that?

A. No, I don't think I did.

Q. Did you mention anything about having money in court that you could use for the purpose of paying expenses?

A. Monday afternoon?

Q. Yes, that Monday afternoon.

A. Not to my recollection, I did not.

Q. Did you at any time before agree that that money should be used for cost purposes, or stated that you would so use it?

A. No, I think there may have been some statement of that kind made either by Mr. Kelso or Mr. Sachs in my presence and I may have said something about it.

Q. You don't have any definite recollection about it then?

A. I do as to the time you speak of.

Q. That is, that you had any such information?

A. No, sir; I do not.

Q. Judge, at the time that Mr. John Watts—that I asked you in regard to Mr. John Watts making the request of you to state to him whether or not his brother W. W. Watts was concerned in this matter or incurred any liability or responsibility by reason of costs or otherwise, if you didn't state to him that he had not, and if he didn't ask you then that you would make a statement in writing to that effect, and if you didn't agree to do it?

A. No, sir; I have no recollection of any such conversation.

Q. Do you say that you did not, or that you do not remember of any such thing having occurred?

A. I say that I did not.

Q. At the time that you went over there, Judge, on Monday wasn't Mr. Watts and Mr. Sachs talking to you in regard to their coming up to attend this court here in response to these citations?

A. On Monday afternoon?

Q. Yes.

A. Something was said about it at some time during the afternoon.

Q. Didn't you tell them that you preferred, that you and Mr. Kelso preferred that they would not come?

A. No sir, I didn't state that.

Q. Didn't you request both Mr. D. A. Sachs and Mr. W. W. Watts not to put in an appearance up here, and that you would see Mr. Hester in regard to the matter, or you would see Mr. Stotsenberg, and have him see Mr. Hester and they could arrange the entire matter and make it entirely satisfactory without their coming, but you didn't want Sachs and Watts to come up here and give their evidence.

A. No sir.

Q. Didn't that occur in that office in the presence of these gentlemen that I have located there?

A. No sir.

Q. On Monday afternoon?

A. No sir.

By the Court:

Q. Judge, I have concluded to ask you a question about the matter that I thought awhile ago probably was not material, that I want to know about. When this proceeding was begun before you to have this receiver appointed did you know that Colonel Charles L. Jewett had gone to Chicago to

see Ryerson & Son, the plaintiff, he, Jewett, at the time representing M. Zier & Company, to get them to bring suit against M. Zier & Company?

A. No, sir, I did not.

Q. If you had known that would you have entertained jurisdiction of that suit?

A. I would not have insisted on the jurisdiction of my court if I thought there was anything wrong whatever.

Q. Did you know at that time that Colonel Jewett, when he went to Chicago to get Ryerson & Son to bring suit against his client and have a receiver appointed for it, that he took $9,000 in money that had been abstracted from the funds of that company?

A. No, sir, I did not, and the first intimation I had of that fact was when Mr. Zier testified to it in this court.

Q. Would you have insisted upon the jurisdiction of your court if you had known these things?

A. No, sir, I would not.

Mr. Fairleigh: Your Honor, I can not object to Your Honor's questions; I don't think what he would have done could be proper evidence as against our client.

The Court: That may be possible, but the court will pursue this investigation as far as it sees fit.

Q. Did you know that when Colonel Jewett went to Chicago with that $9,000, that he also had received $600 as attorney's fee, and that that money had been abstracted from the funds of that company?

A. No sir, I did not, and the first information I had of that was after the hearing had begun here.

Q. Did you know that Colonel Jewett went to Chicago to get Ryerson & Son to sue his client, and have a receiver appointed for his client, that Ryerson & Son had received over $3,000 but a few days before?

A. No sir, and the first time I had any intimation on that subject was when Mr. Zier testified in this court.

Q. Did you know until after Mr. Connor had taken possession of this property that Michael Zier had abstracted from the funds of that company, by padding the payrolls of that company more than $9,000 of its funds?

A. No sir, I did not know that that had occurred, and had no information in regard to his books whatever.

Q. If you had known all of these things would you have appointed a receiver, and as receiver a trust company in which Colonel Jewett was a stockholder?

A. I would not appointed a receiver if I had known there was any fraudulent transaction with this in any way, shape or form.

Q. If you had known that this $9,600 had been abstracted from the corporations funds and turned over as you now know it was, and if you had known that this sum of over $3,000 had been paid to Ryerson & Son only a few days before that receivership proceedings had been instituted in your court, if you had known these things would you have appointed Mr. Kelso in the effort to get this property away from the bankruptcy court?

A. No sir.

By Mr. Hester:

Q. Judge Utz, Mr. Kelso was appointed receiver as the result of a petition that was filed before you as Judge of the Floyd Circuit Court?

A. Yes sir, that is my recollection.

Q. By whom was that petition filed? What attorney?

A. I think Mr. Sachs filed it.

Q. You mean D. A. Sachs, the defendant?

A. Yes sir.

By Mr. La Follette:

Q. The statement, Judge, which you made a while ago that you reached the conclusion to appoint Kelso, and called him over to see you or you to see him the next morning for the purpose of having him appointed, was reached by your own conclusion, I want to ask you whether or not on Wednesday afternoon the matter of the law governing the right to the custody of this property of M. Zier & Company was discussed before you by Mr. Sachs and Mr. Watts and possibly Mr. Jewett.

A. I think I stated that in my direct examination.

Q. Now did that argument or propositions of law that were given to you on Wednesday afternoon by those attorneys influence you in your judgment that you ought to have the receivership in your court?

A. It certainly did.

By Mr. Smith:

Q. Judge Utz, you determined on your own judgment without consultation with either Sachs or Watts to remove the trust company and to appoint Mr. Kelso, did you not?

A. I wouldn't put it that way.

Q. Well how would you put it?

A. I would say that it was done on my own motion and after Mr. Sachs had stated that he thought the trust company ought to be removed.

Q. You gave your deposition, you gave your evidence in this case heretofore?

A. Yes sir.

Q. Did you not say in that examination this: "You say in that examination of this question there, then had been no

definite conclusion reached on Wednesday during that conference? Answer. "No sir, because the attorneys didn't have anything to do or say about what the conclusion was to be; I had to determine that as I understood it myself."

A. Yes sir.

Q. That was in reference to the removal of this trustee?

A. That is what I say now.

Q. They didn't show you any authorities on that afternoon, did they, Judge?

A. They didn't that afternoon.

Q. Now you say that Mr. D. A. Sachs filed that petition to remove one receiver and appoint another; are you not mistaken in that?

A. I say that is my recollection; the records will show.

Q. No the records will show that Mr. Sachs signed it, but the record doesn't show who filed it.

A. Oh, as to who prepared it, I wouldn't say as to that.

Q. Who filed it, I am asking as to that?

A. And I don't know who filed it, whether Mr. Sachs came in person and filed it or whether somebody else did.

Q. You had instructed Mr. Kelso, though, to prepare that? You gave Mr. Kelso instructions on Friday to prepare it?

A. No I don't think I gave Mr. Kelso any instructions as to that.

By Mr. Hester:

Q. The petition was filed on behalf of the United States Tube Company, was it not?

A. Yes sir.

Q. Mr. Kelso represented the United States Tube Company previous to the acceptance of his appointment as receiver; now state to the court how, by what arrangement his representation of that company was to cease and the arrangement was to change?

A. My understanding was it was an arrangement between Mr. Kelso and Mr. Sachs.

Q. And how was Mr. Sachs to figure as attorney for the United States Tube Company who filed that petition?

A. He was to file that petition.

Q. He was to appear for the attorney for the tube company?

A. Yes sir.

By the Court:

Q. Was that the petition upon which Mr. Kelso was appointed?

A. The petition for the removal of the trust company.

Q. Was it the petition upon which the trust company was removed?

A. Yes sir.

By Mr. Fairleigh:

Q. You say that was the arrangement between Kelso and Sachs, have you any personal knowledge of that?

A. Yes sir, I think they talked about it in my presence.

Q. When?

A. Shortly before, I think the same day it was done.

Q. Where?

A. I think that was in my office.

Q. You think it was the same day it was done? What day was it done?

A. Thursday, I think.

Q. You think they talked about it Thursday in your office?

A. Yes sir.

Q. That is about Kelso transferring his client to Sachs for the purpose of filing this petition?

A. Yes sir.

Q. Who was there at the time, Judge?

A. Mr. Sachs and Mr. Kelso and myself.

Q. Was it in the morning on Thursday?

A. I think so.

Q. Was Mr. Watts there in the morning?

A. I don't know whether Mr. Watts was there at that time or not.

Witness excused.

Charles D. Kelso, called for the Government, being first duly sworn and examined by Mr. LaFollette, testified as follows:

Q. You may state your name to the Court?

A. Charles D. Kelso.

Q. Where do you reside?

A. New Albany Indiana.

Q. Are you a member of the Bar at New Albany?

A. I am.

Q. Are you acquainted with Frederick D. Connor the Receiver in Bankruptcy Court of the property of M. Zier & Co.?

A. I am.

Q. Are you acquainted with D. A. Sachs and William W. Watts?

A. I am.

Q. Did you know of the fact that suit had been instituted in the Floyd Circuit Court in the name of Ryerson & Son against M. Zier & Co.?

A. I did.

Q. Were you appearing for any parties in connection with that proceeding?

A. I was.

Q. Do you know who filed the original petition—what attorney for Ryerson & Son?

A. Nothing except what I have heard that Mr. Watts filed it and I think I have seen his name signed to the bottom of the original petition.

Q. Did you know that Jewett & Jewett appeared for M. Zier & Co. in that action?

A. I was so informed.

Q. Did you learn afterwards that proceedings were instituted in bankruptcy against M. Zier & Co?

A. I did.

Q. Did you know the fact that Frederick D. Connor was appointed by the Bankrupt Court as Receiver of M. Zier & Co.?

A. I knew that—yes.

Q. When did you learn that Mr. Connor was demanding possession of the property which before had been in the possession of the New Albany Trust Co. the Receiver appointed by the State Court?

A. I think I learned that for the first time on the 24th of January, 1903.

Q. Proceedings had been begun in the Bankruptcy Court before that time?

A. I do not know about that, whether it was in January but I learned at the time when Mr. Watts presented that petition for authority.

Q. That was in February some time?

A. Yes. sir: in February sometime instead of January.

Q. By the Court: Petition for what?

A. To come up here under limited appearance.

Q. And present the question of jurisdiction?

A. That is the first I heard of Mr. Connor's appointment.

Q. That petition in the state court was presented by William W. Watts?

A. Yes sir.

Q. Then you first learned of the condition as to the bankrupt court and the fact that there was a conflict of jurisdiction. Did you know of the fact that Mr. Watts and Henry Jewett came up to Indianapolis and presented the question to the District Court?

A. I learned that afterwards, Yes, sir.

Q. And did you learn that the New Albany Trust Co. and Mr. Watts as its attorney stated to the Circuit Court of Floyd County that they had stated in Indianapolis in the District Court that they would turn over the property of M. Zier & Co. to the Receiver appointed by the United States District Court?

A. Yes, sir, I learned that, but it was also stated at the same time that there was to be no entry made of record as to that matter.

Q. Who made that statement?

A. Both Mr. Watts and Mr. Jewett.

Q. Where was it made?

A. In the office of Judge Utz.

Q. When was that conversation had?

A. That was had on Thursday morning, I think the 19th of February.

Q. Were you present on Wednesday afternoon before Judge Utz when Mr. Sachs and Mr. Watts and Mr. Jewett were present?

A. No, sir.

Q. When were you first before Judge Utz when this matter was being discussed?

A. Thursday morning February 19th.

Q. Had there been any call on you by any of the parties prior to Thursday morning?

A. Yes sir.

Q. Who came to see you?

A. Mr. Sachs and Mr. Watts.

Q. Where?

A. At my office in the City of New Albany.

Q. At what time in the day?

A. I should say about a quarter after five o'clock in the afternoon.

Q. Of Wednesday?

A. Yes, sir.

Q. By the Court. When you say Mr. Sachs and Mr. Watts you mean the defendants?

A. D. A. Sachs and W. W. Watts.

Q. Had you received any notice that they would probably call on you?

A. Yes, sir.

Q. How had you received that notice and from whom?

A. Henry Jewett telephoned to me to know how long I was going to remain at my office and he said some one was going to come to see me and I asked him if Col. Jewett was there and made an engagement for a gentleman in my office to meet Col. Jewett.

Q. You remained in your office?

A. Yes, sir—until Mr. Watts and Mr. Sachs came.

Q. Then what conversation did you have with them?

A. They came in and Mr. Sachs did most of the talking. Mr. Watts appeared to be very much humiliated about what had occurred in Indianapolis. He stated to me that he intended to comply with his promise and Mr. Sachs said the

court would not permit the Trust Company to turn over the property and the court wanted to meet me in the morning at nine o'clock for the purpose of taking some action to prevent the property from being restored to the United States Court. Mr. Sachs and I discussed the matter and finally it was suggested that another Receiver be appointed in place of the Trust Company, that the Trust Company was going to tender its resignation and then we discussed what would be the effect of the appointment of the Receiver, what would be the trouble, if any with the United States Court, and if there would be any punishment in case the court should proceed against us for contempt and Mr. Sachs assured me that he had never heard of any person being punished for civil contempt by being confined in jail.

Q. By the Court. Who said that?

A. Mr. Sachs and finally I said to them "Well, I am willing to accept the appointment if you gentlemen will guarantee me if I am put to any cost. I am poor and do not care to expend what money I have in fighting somebody else's battle, and they agreed to do it.

Q. Who did?

A. Mr. Sachs did practically. Mr. Watts did not say much about it then.

Q. What did Mr. Watts say about it—did he make the same agreement?

A. Not at that time. Mr. Watts seemed to be very much cut up about what had occurred up here and very much humiliated and kept declaring all the time that he was going to comply with his agreement with this court.

Q. Was there some statement made to you there by Mr. Sachs about the law bearing on the case?

A. Yes, sir he said he thought the Floyd Circuit Court had jurisdiction and the United States Court did not have it.

Q. Was there an agreement then made that evening to meet next morning in the court room or in Judge Utz room.

A. The agreement was that I should meet Henry Jewett, D. A. Sachs, Mr. Watts and Judge Utz. Judge Utz in the meantime called me up and made an appointment that afternoon to meet next morning at eight o'clock.

Q. Was there anything else occurred more than you have stated that Wednesday evening?

A. There may have been some other conversation but I do not recall it now.

Q. Then after that the following morning, whom did you first meet in connection with the matter?

A. Judge Utz.

Q. Where?

A. At my office.

Q. What conversation was had with Judge Utz.

A. The Judge came in and stated that the Trust Company was about to turn back the property to the United States Court and he did not intend to permit it to go and he wanted me to accept the office of Receiver which I agreed to do. Then we went from my office around to Pearl Street and stopped in the Trust Company.

Q. Were you and Judge Utz together at that time?

A. Yes, sir.

Q. Did you meet Henry Jewett there?

A. I don't think Henry Jewett was there but Mr. Sauer and Mr. Connor were there and I called Mr. Sauer to one side and told him not to deliver that property until after the Court had taken action in the matter and he did not say whether he would or would not.

Q. Do you know whether or not Mr. Connor the Receiver was there asking for the delivery to him of the property?

A. I don't know what Mr. Connor was doing there. He was there.

Q. You heard no conversation on his part with any member of the company?

A. No sir, I did not.

Q. You had no conversation with him yourself?

A. Just to bid him the time of day.

Q. From there did you go to Judge Utz room?

A. I think I went over there in the Masonic Temple Building on a little matter over there and after I finished the business there, I went back and went over to Judge Utz office?

Q. About what time did you reach the office?

A. I think about ten minutes after nine o'clock.

Q. Who was there when you arrived?

A. No one except Judge Utz.

Q. How long did you remain there until any one else came in?

A. I think ten or fifteen minutes.

Q. Then who came in?

A. D. A. Sachs and W. W. Watts.

Q. Did they come in together?

A. Yes, sir; they came together.

Q. Was the subject of M. Zier & Co. property taken up then before any one else came in or did any one else come?

A. The law of the case was discussed and finally I said "Where is Henry Jewett? "He was to be here." And they said they did not know and I said "I will call him up by telephone and ask him why he is not here" and I called him up and he came over and he then announced that he was busy at the office and his brother would come over there and represent him in the matter.

Q. Did Henry Jewett take any part in the discussion of the question there before Judge Utz that morning?

A. Not that morning he did not.

Q. He did not file any report?

A. No, sir.

Q. How long was it before Col. Jewett came in?

A. I should say ten or fifteen minutes afterwards.

Q. In the mean time was there still some discussion about the law governing the case?

A. Yes, sir—we discussed the law a good deal.

Q. What was said by Mr. Watts about the law affecting the property.

A. I can not remember what was said particularly by Mr. Watts. While Mr. Watts was protesting all the time that he wanted to comply with the order of this court, he was protesting that he intended to comply with the order of the court, he concurred in the views of the law expressed by Mr. Sachs but he was at all times saying he desired to comply with his promise to this court.

Q. After Col. Jewett came in, what statement did he make to the court about the matter if any?

A. I cannot tell all that Col. Jewett said but he said a good deal and took quite a long time about it.

Q. Along what line did he talk?

A. He said that the Trust Company had concluded to comply with the promise it had made to this court and that it intended to turn the property over to Mr. Connor. During his talk Mr. D. A. Sachs turned to him and asked him if he had delivered up the property and Col. Jewett said he did not desire to be interrupted or insulted, I could not catch just what word he used there and then he went on with his speech to the court.

Q. I am at a loss to know just what the speech was but the substance was—

A. The substance was that the Trust Company in good faith had concluded to turn the property over to the Receiver of the United States Court.

Q. Did he discuss the law any?

A. No, sir—I think not.

Q. Did he say anything there in the presence of yourself and the other lawyers about the condition of the assets, that is the property?

A. No, sir. He was there simply to say that the Trust Company was going to act in good faith and carry out the promise made to this court. It took him a good while to say it but he finally said it.

Q. What statement was made by either of you during that meeting and how long did it last?

A. Mr. Sachs immediately said that there had been some betrayals and the court so expressed itself and both seemed very much disappointed about the action of Mr. Jewett and the meeting adjourned. I went to my office and I think Mr. Watts and Mr. Sachs went to Louisville.

By the Court:

Q. You say both seemed disappointed?

A. Yes, sir.

Q. Who?

A. Judge Utz and Mr. Sachs about the statement of Col. Jewett.

Q. By Mr. LaFolette: That was on Thursday?

A. Yes, sir.

Q. Forenoon?

A. Forenoon.

Q. Were there any other proceedings had that day or steps taken?

A. No, sir.

Q. Was there anything stated about any other meeting?

A. Why, in the afternoon Judge Utz came to my office and requested me to call up Mr. Sachs and invite him to come back the next day and I did call up Mr. Sachs and invited him to come back the next morning?

Q. Let me ask you about that meeting in the forenoon: What statement, if any, did Mr. Sacks make in your presence about what he came over for? What was he there for?

A. He was there in compliance with the previous agreement he had made with me the afternoon before to meet me there at 10 o'clock.

Q. What did he come over there for?

A. For the purpose of taking some steps to retain jurisdiction of that property.

Q. Do you know whom he had talked with prior to his coming to New Albany on Wednesday in regard to the situation of the property or the necessity for taking any steps to retain it?

A. No, sir.

Q. You don't know anything about that?

A. I don't know a thing about that.

Q. By the Court: You understand he is asking you about Mr. Sachs?

A. He is asking me about a conversation prior to Wednesday. I don't know what Mr. Sachs did or who he talked to.

Q. And you don't know why he came on Wednesday?

A. I do not except from what I learned since.

Q. By the Court: From whom did you learn it?

A. From Mr. Sachs and Judge Utz.

Q. Tell what Mr. Sachs informed you?

A. He said he came around there Wednesday afternoon for the purpose of taking some steps to retain jurisdiction of the property in the Floyd Circuit Court.

Q. By Mr. LaFollette: When you telephoned over Thursday afternoon, I believe you say it was to Mr. D. A. Sachs. Did you call Mr. Watts also?

A. No sir, —I think I told Mr. Sachs to invite Mr. Watts to come along with him.

Q. Did you fix an hour at which they were to meet you and where it was to be?

A. Ten o'clock at Judge Utz office.

Q. Then did you have any further talk yourself with Judge Utz before the meeting on Friday at 10 o'clock?

A. Yes, sir— I think I did. The Judge was very much disappointed about the action of the Trust Company in declaring it was going to turn the property over and felt aggrieved about it and he insisted that he had jurisdiction and intended to keep it—retain it.

Q. When you met on Friday morning—you did meet at Judge Utz office?

A. Yes sir.

Q. Who was present at that meeting?

A. Mr. D. A. Sachs, Mr. Watts, Judge Utz and myself and I believe the Deputy Clerk was there though I am not sure about that.

Q. You may relate to the court just what steps you took and what was said back and forth among you about the business that was being looked after?

A. At that meeting?

Q. At that meeting on Friday morning?

A. We discussed the law of the matter for about probably half an hour or so and then concluded to adjourn to my office.

Q. By the Court: You knew then that the property had been turned over to the Receiver of this court?

A. Yes sir.

Q. And that the Receiver of this court was then in possession of the property?

A. Yes, sir—we knew that.

Q. Proceed?

A. We went around to my office and then the court announced that he intended to appoint me Receiver and that he would instruct me to appoint Mr. Sachs my attorney. Mr. Sachs said he was willing to accept the position and then I said to the court "Well, I don't know whether I can serve or not. I am attorney for some parties of record and the statute says that an attorney of record cannot be appointed Receiver and the court suggested that I withdraw as the

attorney of these parties and then I could be apppointed Receiver and I did then withdraw my appearance for these parties and we agreed that I should be appointed Receiver.

Q. By Mr. LaFollette: Did you have any opportunity to confer with your clients about that withdrawal?

A. No, sir; I did not confer with them.

By Mr. Fairleigh. May I ask where that was?

A. In my office.

By Mr. Fairleigh. Was Mr. Watts there?

A. No, sir.

By Mr. LaFollette.

Q. And Utz and Sachs were there?

A. Yes sir.

Q. That was after you reached Judge Utz's office?

A. Yes sir.

Q. Was there any conclusion reached after you left as to what course you should fcllow?

A. The conclusion arrived at was that I was to be appointed receiver; but Mr. Watts dropped away from us on the way around; he left us and didn't come with us.

By the Court:

Q. He was present when the determination was reached that you should be appointed receiver?

A. Yes sir.

By Mr. Fairleigh:

Q. Where was that?

A. That was at Judge Utz's office.

By Mr LaFollette:

Q. Was there anything said at that time or prior thereto about expenses incidental to the proceedings?

A. Yes sir, I announced there that Mr. Watts and Mr. Sachs had agreed to bear the expenses.

Q. Did you state that to Judge Utz in the presence of each of the gentlemen?

A. I did, yes sir.

Q. Where was it that that statement had been made to you that you repeated in their presence?

A. At my office the evening before,—the Wednesday evening before, not the evening before.

Q. You may tell the court just what was said to you on Wednesday evening that induced you to say to the court, that they had agreed to bear the expense? You may repeat their words, if you can?

A. I don't know that I can repeat their exact words, but I said to them this. I said to Mr. Sachs principally, because Mr. Watts was walking back and forth and seemed excited and worried about the matter, that there might be some contempt proceedings or something of that sort, and

that I might be punished, and he said—might be fined for there was some costs attached to these things, and he said, that he had never heard of a person being punished in a civil proceeding for a civil contempt by being put in jail, but that I might be fined and there might be some costs attached to it; and I said, well if they would agree to stand the fine and costs that I would accept the position as receiver. That is the conversation that I reported to Judge Utz.

Q. What did they say when you said that?

A. Mr. Sachs agreed to do it.

Q. Can you give substantially what he said?

A. Well he said he would pay the costs.

Q. When you talked with Judge Utz about it over at the court room was there anything said to him about whether or not there was any money that might be ordered by the court to be applied to the expenses.

A. Yes sir, there was.

Q. You may state what was said about that?

A. There was some discussion about perhaps the court could get $900 that was in the hands of the clerk for the purpose of paying costs; that that would not be turned over to the federal court; there was some discussion about that also.

Q. You spoke of money that was in the hands of the clerk. Was that money that had been paid in in connection with the suit or the receivership in the M. Zier & Company case?

A. Yes, some Louisville concern had paid it in, for the purpose of securing the completion of some contract.

Q. It was still in the hands of the clerk?

A. Still in the hands of the clerk.

Q. At the time when you talked to the court about withdrawing as attorney for certain parties connected with the case, what was said about the condition it would leave them in as to their being represented in court by anyone?

A. I said that Mr. Sachs could represent them.

Q. What did Mr. Sachs say about that?

A. He proceeded to represent them by signing a petition for the removal of the trust company.

Q. That was the tube company that you have reference to particularly?

A. Yes sir.

Q. The United States Tube Company?

A. Yes sir.

Q. That company had been your client prior to the arrangement about your being appointed receiver?

A. Yes sir.

Q. And with that talk and agreement with Mr. D. A. Sachs he assumed to act for the company?

A. Yes sir, he signed the petition.

Q. And acting for the company?

A. Acting for the company in that matter.

Q. Acting for the company in that matter he made out and filed or caused to be filed a petition showing to the court—

Mr. Miller: I object to that, if your Honor please.

Mr. LaFollette: I was going to ask whether or not he filed or caused to be filed in the Circuit Court of Floyd county a petition on behalf of the United States Tube Company.

The Court: If who did?

Mr. LaFollette: If Mr. D. A. Sachs, acting as attorney.

Mr. Miller: He was reciting that that was what Mr Sachs did, and was asking if that wasn't so. And we are objecting to it.

Mr. LaFollette: I will withdraw the question.

Q. I will ask you if it is not a fact that Mr. D. A. Sachs accepting the position as attorney for your client, the United States Tube Company, filed in its behalf a petition before the judge of the court in vacation, alleging that the New Albany Trust Company, receiver of M. Zier & Company, had wrongfully and unlawfully and without leave of the court, turned over the property of M. Zier & Company, which had it in its possession as receiver, to Frederick D. Connor, who was acting as receiver, appointed in bankruptcy in the United States District Court of Indiana, and that the company, the New Albany Trust Company as such receiver was at the time threatening and would if not prevented turn over to Frederick D. Connor, receiver, all the other assets of M. Zier & Company which still remained in its hands as such receiver?

A. Yes, sir, he signed that paper and swore to it before a notary public.

By the Court:

Q. D. A. Sachs did?

A. Yes sir.

By Mr. LaFollette:

Q. And it was upon that proceeding and petition that the New Albany Trust Company as such receiver was removed from its position as receiver.

A. It was on that petition and in connection with its report that it had delivered the property over.

Q. And it was after that that you were appointed receiver was it not?

A. Yes sir.

Q. I want you to state to the court whether or not it is not a fact that after you were appointed, D. A. Sachs, the attorney acted for you as your attorney?

A. He certainly did.

Q. You may state to the court whether or not under his advice and direction—

Mr Miller: (Interrupting)

If your Honor please I object. Every question he asks is for a conclusion.

Mr. Kealing: He has a right to finish his question:

Q. (Preceding question read by the stenographer and completed by the attorney as follows): You may state to the court whether or not under his advice and direction you as such receiver made demand upon Frederick D. Connor, the receiver appointed by the bankrupt court for the possession of the property which he had received from the New Albany Trust Company?

Mr. Miller: I object to that because it calls for a conclusion. I think it is only proper for him to tell what Mr. Sachs said to him upon that subject; and then it is possible for the court to determine whether it was under his advice or direction.

The Court: I think that is better. I am not deciding that that question is improper, but I think the other way is the better way to get at it Mr. LaFollette. Ask him what was said; This witness is intelligent, and you can ask him what Mr. Sachs said upon that subject, if anything.

Q. You were appointed receiver by the Judge of the Floyd Circuit Court after the filing of the petition that I have referred to.

Mr. Miller: He has stated that.

A. Which petition do you refer to?

Q. I mean this one for the tube company; was it after that that you were appointed.

A. Yes sir.

Q. What, if anything did D. A. Sachs say to you after your appointment in regard to your duties, and what you should do as receiver?

A. Well we discussed the matter at length and went to my office and investigated the statutes, the statutes of Indiana, as to how we should proceed in the matter. We turned to the statute in regard to receiverships, and consulted about how the statute should be construed, and he advised me to make a demand on Mr. Connor, and went with me as far as upper 7th street, when I was on my way to make the demand he and Mr. Watts.

By the Court:

Q. On your way up to Mr. Connor to make the demand?

A. Yes sir.

Q. Did they both go with you?

A. Yes sir.

By Mr. LaFollette:

Q. How near is 7th street to where Mr Connor lives.

A. We separated at 7th and Spring, Mr. Sachs and Mr. Watts, and Mr. Connor lives on Main, two squares away a little above 7th street.

Q. Do you know where Mr. Sachs and Mr. Watts, were going that caused them to go that far with you?

A. Yes, they were sauntering along waiting for a car, to catch a car to go to Louisville.

Q. What, if anything, was said to you about what you should do if Mr. Connor refused to deliver to you the property on your demand?

A. Oh, the whole matter had been arranged; the papers had been prepared that afternoon at my office by Mr. Watts,—or Mr. Sachs and myself.

By Mr. Fairleigh:

Q. Did you say Mr. Watts was there?

A. No Mr. Watts wasn't there: Mr. Watts came in, I believe, once during the afternoon, but he went out right away; he didn't stay long. And the papers were prepared; we anticipated that Mr. Connor would refuse to deliver the property, and the writ was prepared and the order of the court and everything. Everything was ready before Mr. Sachs went to Louisville.

By Mr. LaFollette:

Q. When you say the orders, had you prepared the orders that you would ask the judge to sign?

A. Yes sir.

Q. Had he signed them yet?

A. He had only signed the order requiring me to make a demand on Mr. Connor.

Q. That one had been signed?

A. That one had been signed.

Q. And before you made that demand, you had anticipated a refusal and prepared the papers for the subsequent steps up to the time of having the sheriff go out and take the property?

A. Yes sir.

Q. Then after you went out and made demand on Mr. Connor for the property you didn't see Mr. Sachs any more that evening?

A. No, he took a car, I suppose, and went to Louisville.

Q. After the refusal you may state then what you did as to causing or asking the judge to sign the further orders in regard to the sheriff?

A. Well I reported back; I went to the clerk's office in the court house to sign the report which had been prepared previously, wherein I showed that Mr. Connor had refused to turn over the property, and then the court signed the other order, which was there ready for him to sign.

Q. Do you know who delivered the writ to the sheriff?

A. My impression is that the court handed the writ to the sheriff, but I am not certain about that.

Q. Did you go with the sheriff when he went down to the plant?

A. No, I remained at the clerk's office.

Q. Until the sheriff returned and he reported that he had possession, but stated that there was a man out there in the property, and I declined to go out and take possession, for the reason that I wanted full possession or none at all; and the sheriff went out again for the purpose of getting this man out, and he came back and reported that he had put him out and was ready then to put me in possession.

Q. What time was it that you were taken out by the sheriff, or went out and took possession of the property?

A. It was between eight and nine o'clock; just exactly when I don't know.

Q. Of Friday night?

A. Friday night.

Q. I believe you stated a while ago that during the afternoon while the papers were in course of preparation Mr. Watts came into your office?

A. Yes.

Q. But wasn't there all the time?

A. No he wasn't there all the time.

Q. Was there anything said by him at any time after you were appointed receiver or immediately before you were appointed, when the matter was being talked on between you and Mr. Sachs,did he join at any time in the conversation as to the methods that you might adopt or resort to?

A. Mr. Watts, he protested all the time that he wanted to comply with the order of the court, but he gave opinion in regard to the law—

The Court: (Interrupting) Answer the question. You are not answering the question that was put to you. Read the question.

Q. (Preceding question read by the reporter from his notes.)

A. No I don't think he did, excepting this: That while we were preparing the notice to serve on the trust company and Mr. Watts, he said I will get out of here and go around to Goodbugs, and you can send the sheriff around there, and he will find me there, and you can serve the notice

on me there. We went around there after awhile, saw Mr. Watts and took lunch with him, and he said the sheriff had served him.

Mr. Fairleigh;

Q. What notice was this?

A. That was the notice for the removal of the New Albany Trust Company.

By Mr. LaFollette:

Q. During the time that these matters were being discussed did you hear of the proposition that was talked of of having the trust Company cited for contempt?

A. Yes I heard that.

Q. And did you, in the same connection, hear the matter talked of of citing Watts for contempt also?

A. Yes sir.

Q. You may state to the court what, if anything Mr. Watts himself said about that?

A. Well he said he ought to be treated the same as the trust company.

By the Court:

Q. Who said that?

A. Mr. Watts.

Q. He wanted justice to be dealt out impartially?

A. Well I don't know what he wanted done.

By Mr. LaFollette;

Q. What day was that on which that matter was talked of? On Friday?

A. On Friday.

Q. At what time were the responses to be made in answer to the citation for contempt?

A. I think they were out for Saturday? they were afterwards postponed until the Wednesday following.

Q. After you took the property on Friday night did you continue in possession then until Saturday night or Sunday?

A. Yes I continued in possession, I suppose, until Mr. Connor took possession.

Q. Well that is what I mean; how long was that?

A. I don't know when Mr. Connor took possession.

By the Court:

Q. It was after your trial here.

A. Well whenever it was that is the time.

By Mr. LaFollette:

Q. Following the time when you took possession on Friday night, did you have any conference with Mr. Sachs or Mr. Watts before a citation was served on you to appear here?

A. Oh yes.

Q. When did you have the next meeting?

A. Saturday.

Q. What time Saturday?

A. Oh I suppose it started at ten o'clock in the morning and lasted until late in the afternoon.

Q. Where did you meet them?

A. They came to my office.

Q. When I say meet them, did Mr. Watts and Mr. Sachs come there together?

A. Yes they came together.

Q. Do you know what they came there on Saturday morning for?

A. Mr. Watts came for the purpose of filing his response to the proceedings for contempt, or asking the court to defer the time in the matter.

Q. What did Mr. Sachs come there for, if you know?

Mr. Miller: I think he had better state what he said.

A. Well I don't know what he came for; I know we went out to the plant together, Mr. Sachs and I did, and went through it.

Q. What, if anything, did he say to you on that visit about what you should do in the plant?

A. Well, we discussed the question as to whether we should operate or not, and it was concluded to operate the plant beginning Monday.

(Whereupon the court adjourned until to-morrow, Wednesday morning, at nine o'clock.)

WEDNESDAY, MARCH 1, 1903.

MORNING SESSION. 9 A. M.

The court met pursuant to adjournment, present the same as on yesterday.

The Direct Examination of the witness Charles D. Kelso, was resumed as follows:

Questions by Mr. LaFollette:

Q. What was said if anything about any further or different steps to be taken before the court, or in connection with this matter on that day?

A. Mr. Watts advised Mr. Sachs and I to go to the Deputy United States Clerks office at New Albany. He said that he had been there and had looked over the record and had failed to find any entry or order which set out the proceedings had in this court on the 16th of February. He suggested to Mr. Sachs and I that we go there and examine the record so that we could verify his statement about it.

By the Court:

Q. When was that?

A. That was on Saturday.

By Mr. LaFollette: That was after you had taken possession of the property?

A. Yes sir, he had before represented to us there would be no such order made.

Q. Well what statement had he made about that order?

A. He represented that the court had agreed that no such order would be entered; that is to say that the record wouldn't show anything that took place here on the 16th of February, but that the original order would stand.

Q. Well you knew, and Mr. Sachs knew,—that is you talked together about the original order, and the order of adjudication?

A. Oh yes, the first order we knew all about it, because we had talked about it.

By the Court:

Q. That is the order for the appointment of Mr. Connor as receiver, and his order to take possession of the property?

A. Yes sir.

By Mr. LaFollette:

Q. What was said, if anything, about that order that had been originally made being still in force?

A. Well Mr. Watts said that that order would stand.

Q. And did you and Mr. Sachs go to the Clerk's office at New Albany?

A. We did. I examined the files there, and found no order, but found a letter from Mr. Butler, the Clerk which Mr. Sachs told me to take a copy of; instead of taking the copy I asked the Deputy Clerk to let me have the original letter, and he let me have it and I took it to my office and had a copy of it made and afterwards returned it to him.

Q. That was a letter stating what?

A. What he would do—

Mr. Miller: If Your Honor please, I think the letter had better be produced?

Mr. LaFollette: It would be the best evidence of course of what it contained; I am not particular about it.

Mr. Miller: I don't know that it is at all material.

Mr. LaFollette: No, it is not.

Q. You got the letter from the clerk when you and Mr. Sachs were together.?

A. Yes sir.

Q. You each of you read it?

A. Yes.

Q. What time on Saturday, if you know, did Mr. Sachs and Mr. Watts return to Louisville?

A. It was late in the evening.

Q. Was Mr. Watts with you, and Mr. Sachs, during the day most of the time? They were over in New Albany?

A. Not most of the time; Mr. Sachs and I were together most of the day, but Mr. Watts wasn't with us most of the time; he was with us frequently.

Q. What time in the day, if you know, was the extension of time given by Judge Utz in the contempt proceedings?

A. I don't know. I wasn't there. We were over at the Deputy Clerk's office at the time I understood after Mr. Moser and Colonel Jewett and Mr. Watts were before the court.

Q. At the time they were before the court you and Mr. Sachs were not present?

A. We were not present.

Q. When was it that you received the notice or citation to appear here in this court on account of the retaking of the property?

A. About half past nine, Saturday night.

Q. How soon after that notice was served did you communicate with M. Sachs or Mr. Watts?

A. I communicated immediately by telephone to Mr. Sachs.

Q. On Saturday night?

A. Saturday night.

Q. What was said between you by phone?

A. I told him that I had just been served by the Deputy Marshal with a rule to show cause, and told him that he was also included in the rule. He wanted to know what the charge was against him, and I said acting as my attorney.

Q. And what response did he make to that?

A. Well he said he didn't see how they could proceed against him. Then we made the engagement to meet the following morning.

Q. Where were you to meet?

A. At Judge Utz's office.

Q. Did you communicate with Judge Utz on Saturday night?

A. Yes; oh, yes I went down to Judge Utz's office.

Q. Did you talk with him before you communicated with Mr. Sachs?

A. Not about the time of meeting the next day; that was afterwards communicated to Mr. Sachs after I had met Judge Utz.

Q. So that the arrangement for the meeting at Judge Utz's office was with his understanding and consent?

A. Mr. Sach's?

Q. No, Judge Utz?

A. Oh yes.

Q. Was there any suggestion or statement made that Mr. Watts should also meet with you?

A. Well I don't know what was said in the telephone communication.

Q. Well, I mean was there anything said by you or Judge Utz about calling Mr. Watts into conference?

A. Well Judge Utz and I concluded to have Mr. Watts come over also; but I don't know what was said in the communication by telephone, because we sent some young man out to telephone to him; I don't remember who it was, now.

Q. Then did you meet on Sunday morning?

A. Yes sir.

Q. Who was present at that meeting?

A. Well, there was Judge Utz; I think the Deputy Clerk was there, and myself, first. We waited some little time at Judge Utz's office, and I looked out the window and saw Mr. Watts and Mr. Sachs coming down Spring street; we immediately went down from Judge Utz's office, and met them at the court house door and told them we would go over to my office as there was no fire at the court house.

Q. And so the meeting was had at your office, was it?

A. Yes sir.

Q. At that meeting Mr. Kelso, you may state fully what the conversation was; what was said by any of the parties present?

A. Well, Mr. Sachs and Watts and Judge Utz and I discussed the law; I couldn't say just what we said, but the opinion was expressed that the Floyd Circuit Court had jurisdiction still, and I then asked Mr. Sachs about the provision in the rule served on me about redelivering the property and not interfering with it; I said I don't want to violate the order of the court, and asked him if I hadn't better turn the property back, and he said, no, that don't mean that; you can turn it back if you conclude to do so when you go up to answer the rule; and we discussed the effect, and the form and substance and contents of the responses to the various rules, and finally it was agreed that I should come over to Mr. Sachs's office the next morning. Then the meeting adjourned. It adjourned along about 12 o'clock.

Q. Did you have any further talk or meeting there with Sachs or Watts on that day?

A. I had a talk with Mr. Sachs in the afternoon about five o'clock. My baby was sick and I had come to town to get some medicine, and coming up in the car I met Hester, and asked Mr. Hester about what had taken place up here on the 16th. And he told me. I said, there was no order of that kind. Hester said, yes, there is, and I have the order at my office. Well, I said, we might as well quit if that is so. I

said I would like to get the order. When I went back home I telephoned to Mr. Sachs about it, and he said well, we are done for if that is true, because I am a great fellow for records.

Q. Sachs said that?

A. Yes; and he said, don't come over now until you get that order from Mr. Hester, or a copy of it. I went to the office of the Deputy Clerk the next morning about nine o'clock and waited for him some time and then went to Mr. Hester's office. Mr. Hester had the order, and wouldn't let me have it until he had taken it down to the Deputy Clerk's office. Finally I got the order at the Deputy Clerk's office and I took it over to my office and had a copy made of it, and then I went over to Mr. Sach's office at Louisville.

Q. Have you a copy of that order now?

A. I left it with Mr. Sachs.

Q. You left it with Mr. Sachs?

A. Yes.

Q. Was that Sunday afternoon that you went over?

A. No, it was Monday morning. I telephoned to him about that Sunday afternoon when I got home.

Q. Then on Monday morning you went over to Sachs' office?

A. Yes sir.

Q. You had a copy of that order with you, had you.

A. I had a copy of that order with me.

Q. Had you also arranged with Judge Utz to go to Louisville that morning, Monday?

A. No, I made no arrangement with Judge Utz.

Q. After you got to Louisville and went to Sachs' office, what if anything was said about calling Mr. Watts in?

A. Well I don't know. Mr. Watts came there. You see they have a very large building there, and the telephone is in the front office; I don't know how far away it is; and we were in the back office. What occurred over the telephone I don't know, but Mr. Watts came there.

Q. About what time in the forenoon was that meeting at which you and Mr. Sachs and Mr. Watts were present in the office at Louisville?

A. Between ten and twelve o'clock; I couldn't state just the time.

Q. And what was said there?

A. Well Mr. Watts was shown this order, and he said that wasn't according to his understanding.

Q. As to the matters it contained, you mean?

A. No, not that; but there was not to be any such order put of record.

Q. Well then what further was said?

A. Well then we entered into a discussion of the law. Mr. Maurice Sachs, this gentlemen sitting here, (indicatting), Mr. Jo Sachs, Mr. D. A. Sachs and Mr. Watts and myself taking part in the discussion.

Q. As to the law that would govern it in the face of that order?

A. As to the jurisdiction of the courts, yes sir.

Q. Well the question that you were there mainly to discuss was as to what kind of response to make, was it?

A. Yes sir, that is what I went over for, to get them to prepare my response.

Q. The question of law had been pretty thoroughly discussed before as to what they understood to be the law governing the case, wasn't it?

A. Well, Mr. Maurice Sachs had never discussed that question with me before; Mr. D. A. Sachs and Mr. Watts had.

Q. In the discussion on Monday was there any new authorities or different citations presented to you than what there had been before?

Mr. Fairleigh: If the court please, there is no dispute about what the opinion of these gentlemen was; what professional opinion they had, or that they felt any doubt about it; and it occurs to me that this is consuming too much time.

Mr. LaFollette: I asked this question for the purpose of showing, or learning, whether or not a different conclusion had been reached there that morning than what had been reached before, tending to delay the response.

The court: I will hear the testimony.

A. No, no different conclusion was reached, for they still contended that the Floyd Circuit Court had jurisdiction.

Q. Well then, you may go on and state what was said and done with reference to the preparation of the responses?

A. Well I don't say anything was done in that direction at all. We talked all day about the law. Finally Mr. Watts' brother came and suggested that Mr. Watts ought to retire from the meeting; that he ought not to be connected with it at all. I said I don't see any reason why he should retire; he was there; he was ruled to answer, or respond, and I couldn't see that his being there now would endanger him in any way. So he staid a while and finally announced that he had an engagement with Mr. Henry Jewett to meet him at his office at half past one, I think it was, and he left.

Q. Was there anything said as to the purpose of the meeting with Mr. Jewett?

A. Yes, Mr. Watts wanted Colonel Jewett to come up here and represent him in the contempt proceeding. I told Mr. Watts that Colonel Jewett wouldn't come; he need not expect that.

Q. But notwithstanding you statement he left there to see Col. Jewett about that matter?

A. Yes.

Q. What was said, if anything, about his having gone out, after he did go, by Mr. Sachs or yourself, about Watts' absence?

A. Notning that I know of particularly.

Q. Did Judge Utz come in, in the meantime?

A. No, Mr. Sachs and I went out to lunch, but we left word with the colored janitor that if Judge Utz came—Mr. Sachs describing him—to tell him to wait till we returned. I think Judge Utz had telephoned over that he was coming.

Q. Well was there anything further said about what you would do in the way of responses before you came back from lunch? You were still together, as I understand?

A. We were still together. No, we didn't talk about that. We met a great many gentlemen, and talked with them; they were joking with Mr. Sachs about being proceeded against for contempt.

Q. What was said during the afternoon finally as whether or not Mr. Sachs would come up with you, on Monday.

A. He finally concluded not to come.

Q. Well what was it he said in connection with that, as to why he wouldn't come?

A. Well Mr. Watts came back in the afternoon, and announced that Colonel Jewett wouldn't come up here and difend him, and Mr. Watts said that he was coming any way. We finally got into a discussion as to whether it was policy for him to come; I advised Mr. Watts not to come, because I thought the court was after him, from what I heard at New Albany, and he concluded not to come. Mr. Sachs said he wouldn't come because he didn't want to testify against his friend, Mr. Watts.

Q. Well did he state to you there, or was there anything said as to what matters he might be required to state that he didn't want to tell?

A. Oh well he didn't state them directly; I knew what he didn't want to tell. At least I thought I did.

By the Court:

Q. What was his language when he said he didn't want to come here, or wouldn't come here?

A. Well he said he would rather go to Jamaica than to come up here, or appear here.

Q. Mr. Sachs said that?

A. Mr. Sachs said that.

Mr. Miller: My understanding is that Jamaica is a pleasant place to go to.

The Court: He doesn't seem to have availed himself of the option.

By Mr. La Follette:

Q. What time in the afternoon was that statement made to you?

A. Along about three or half past three o'clock.

Q. Well when you learned that neither Mr. Watts nor Col. Jewett, nor Mr. Sachs, — that Mr. Jewett wouldn't appear for Watts, and Watts would not come and Sachs had concluded not to come, what statement did you make about it?

A. Well I said that I was going out to telephone to Indianapolis for a lawyer.

Q. What if anything did you say to them or either of them there about the expense that would be incident to the proceeding?

A. I asked them if they were going to carry out their agreement to put up the expenses. Mr. Watts said: You know I couldn't bind Ryerson & Son; you know an attorney couldn't bind his client to put up money, and they said they wouldn't put up anything; and I recognize the fact that I would have to bear my own expenses.

Q. At the time that the matter of expense was talked about, was there anything said to you that the expenses would be taken out of the money—that is charged to Ryerson & Son, or whether they would pay them?

A. No, nothing was said about Ryerson and Son in the beginning. This was said by Mr. Watts over in Mr. Sachs's office on Monday.

Q. What if anything was said,—going back now to the time when you talked about expenses earlier,—what was said if anything by either of these parties in the presence of the judge, or by the judge, about making an allowance out of the funds of the M. Zier & Company property, to you and to the attorney?

A. Well they advised,—both Mr. Watts and Mr. Sachs,—that the court certainly had the right to retain the $900 under the ruling in the 184th United States case; that it was in possession of that fund and had the right to pay the expenses of the court.

By the Court:

Q. There are two cases in that volume, 184th United States; which case is it?

A. The Comingor case, I think it was.

Q. That is the case that Mr. Sachs was in?

A. Yes sir.

By Mr. LaFollette:

Q. What if anything was said about making an allowance of $1,000 to the attorney or to the receiver, and $400 to the other party?

A. Well the Trust Company had agreed to report to the Floyd Circuit Court and have a settlement with the Court. Mr. Watts claimed $1,000 as attorney and the Trust Company was to receive $400.

By the Court:

Q. I don't understand that. Who did Mr. Watts claim it for?

A. As attorney for the trust company in the matter of the receivership of M. Zier & Company.

By Mr. LaFollette:

Q. That was for services in the suit in the State Court prior to this order to turn over the property?

A. Yes sir.

Q. That didn't have reference then to the expenses of yourself and Mr. Sachs?

A. No.

Q. Well after you had gone out to telephone to Indianapolis, was there anything further said over at Louisville on Monday afternoon about the steps that were to be taken and matters done?

A. I came back and reported to them that I was unable to get the gentleman that I went out to employ and said I was going home and make preparations to go to Indianapolis right away. Judge Utz and I started out and Mr. Watts called me to one side, spoke to me, said he was sorry it happened and anything he could do for me he would gladly do himself if he could; and then we left, went up to the Western Union Telegraph office, and I telegraphed up here.

CROSS-EXAMINATION.

Questions by Mr. Smith:

Q. Mr. Kelso, I believe you are a lawyer?

A. Yes sir.

Q. How long have you been in the practice?

A. Since 1885.

Q. Since '85; you are one of the parties who were cited to appear here in this court?

A. Yes sir.

Q. And were convicted on the rule?

A. Yes sir.

Q. Now in jail?

A. Yes sir.

Q. Under what sentence?

A. Sixty days.

Q. How long a time have you served on that sentence?

A. Since last Tuesday a week.

Q. You are a stockholder, I believe, and were at the time of your appointment as receiver, in the New Albany Trust Company?

A. I am not certain I am a stockholder now. I ordered my stock sold.

Q. You were at that time?

A. I was at that time.

Q. You were representing a good many creditors as against the M. Zier & Company corporation were you not at the time these troubles arose and continued?

A. Well I was representing the New Albany—or the Indiana Water Company, that had a small claim for water, monthly rental; the United Gas & Electric Company that had a small amount due; and then I represented the United Stated Tube Company; and I represented the house of Standard and Gamble for some boilers that had already been procured.

Q. The tube company was the claim that you say on Friday you turned over to Mr. Sachs?

A. Yes sir.

Q. In order that he might have a standing in court to file a pleading?

A. Yes, sir.

Q. I believe you said upon yesterday that on Saturday—no, Friday I mean, when the suggestion was made as to your being appointed receiver and when you were trying to arrange the orders that you were attorney of record, and it was then on that day further suggested by the court that you withdraw as attorney of record, in order to qualify yourself as receiver?

A. That is true.

Q. When did that court adjourn finally that term, Mr. Kelso?

A. I don't remember what day it was. I think it was the 14th of February?

Q. Was it not on Saturday, the 14th of February?

A. I think it was.

Q. When did Mr. Watts and Mr. Jewett come to Indianapolis for the purpose of intervening here in the federal court?

A. I don't know.

Q. Don't you know that they were here on the 16th and the 17th?

A. I have heard they were; yes.

Q. You know that they were bock there on the 18th?

A. No, I don't know that.

Q. You don't know that they were back at New Albany on the 18th?

A. On the 18th of February?

Q. Yes.

A. Yes sir, I know that; yes sir, they were at my office, Mr. Watts was on the 18th.

Q. Don't you know as a matter of fact that on the 14th of February in the Floyd Circuit Court before these gentlemen left for this city, that they filed a petition asking for advice and authority to intervene in this court?

A. Well I heard Mr. Watts talking about that, about having authority for a limited appearance here; yes I knew that.

Q. Now you say you withdrew as attorney on Friday in order to qualify yourself? That was the 20th? In order to qualify yourself to be appointed receiver?

A. Yes.

Q. That you had discussed the questions upon that day in regard to the Indiana statute which did not permit you to be appointed if you were attorney of record for any of the creditors?

A. Yes, sir.

Q. I want to read to you the order as of February the 14th. This is the order in the transcript that is filed as an exhibit here with the response and it reads as follows: "Comes now the New Albany Trust Company, receiver herein and files its petition herein showing to the court divers matters concerning the filing of a petition in the District Court of the United States for the district of Indiana by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier and Company, in involuntary bankruptcy, and a petition seeking the appointment of a receiver therein to take charge of the assets in this courts possession." I read that part of it merely to call your attention to the petition that was filed upon which the following order was made:

"And said receiver is hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said district court of the United States for the district of Indiana the facts with regard to the matters here, said injunction, restraining order, and said estoppels and to suggest to said court the orders of this court and the fact that had it been fully informed, as is believed by this court, its order with respect to the assets herein would at the most, have been a direction to make an application to this court at the proper time and in the proper way for delivery of the said assets to such district court's receiver or trustee after proper disposition and settlement

of the matters herein. The court being further advised and on motion of said New Albany Trust Company, receiver, it is ordered that the Inland Steel Company, John C. Thruston and the Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy why they have filed said petition seeking the appointment of a receiver for the assets of this estate, why they have sought to take from this court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this court without first obtaining leave of the court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this court. And service of a copy of this order upon Jacob Herter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose thereof on all persons and parties. And it is further ordered that this court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein. And Jacob Herter and George H. Hester such attorneys now being present in court and Hester having been heard in opposition to the said petition and having notice of the entry of this order, it is now ordered that no other or further notice hereof need be given the said Inland Steel Company, John C. Thruston and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asks leave of the court to withdraw as the attorney of record for the following named parties: United Gas and Electric Company, United States Tube Company, Indiana Water Company and Simon David and the court now permits the said C. D. Kelso to withdraw herefrom." Now this order bears date according to the certificate of the clerk as of the date of February the 14th, and as of the same date that the petition for advice was filed by Mr. Watts in the latter court. Now do you desire to explain your evidence on yesterday and this morning as to your withdrawal of these claims on Friday the 20th, and explain why it is that you said that you withdrew on account of the fact that you were going to be appointed receiver, with in truth and in fact they were withdrawn at least six days before the appointment of another receiver was suggested?

A. Yes sir, I can explain that. Mr. Sachs claimed that he was a great fellow for records, and that the record was the thing we had to depend on. He said that he had an experience with the district court of Kentucky one time, and that

his experience was, while we were working, the other fellows were working—

Q. (Interrupting). When did that conversation take place?

Mr. Kealing: Let him explain.

A. (Continuing). He said that he had filed in the court, I don't know what sort of a paper, he called it a paper, and that he took the precaution to have the clerk make a certified copy of it; that when the case was over and the bill of exceptions was prepared, in looking over the record he found that instead of filing the paper of record, the record only showed the tender of the paper, and for that reason he always took the precaution to have certified copies. It was suggested on Friday by Mr. Sachs that the record be fixed in that way. This entry of February 14th was not entered of record on February 14th, but was entered after that time, and this little memorandum here about my withdrawal was added on to the entry after the entry had been put of record by the clerk; and that is my explanation of it.

Q. Who added it to the entry Mr. Kelso?

A. I think the deputy clerk did.

Q. The deputy clerk?

A. After the order had been signed; the order had not been signed, the last day of the court we have a great many things that are not put of record; they are left on the files to be entered by the clerk on the record, and when the record is written up then the court reads them and signs the record.

Q. You say the order, then, had not been drawn up on the record.

A. No, that little end of the order had not been.

Q. Had the other order been drawn up?

A. It had been drawn up, and left with the clerk and was put on record; and then Mr. Sachs and I drew that little entry there and I took it down and left it with the clerk and it was added. So that it is how happened.

Q. Was that done without the knowledge of the judge?

A. No it was done with his knowldge.

Q. Done with his knowledge?

A. Yes sir.

Q. Did you not know that you could not withdraw as attorney of record six days after the court had adjourned? Did you not as a lawyer know that fact?

A. I knew that, but the record was there and the Court said he would show that on the record. Yes sir, I knew it.

Q. Didn't you know as a lawyer that they could not show on the record a transaction that had taken place six days after the Court had adjourned?

A. Yes sir.

Q. Why did you insert it, then, or have it done?

A. Because the court asked me to do it.

Q. The court asked you to do it?

A. And the court wanted to have it done, and he wanted the record to stand in that way.

Q. It was, then, at the suggestion of the court that you had this interlineation made in that order?

A. At the suggestion of the court and Mr. Sachs.

Q. Where was it Mr. Sachs made that suggestion?

A. At my office.

Q. Who was present?

A. Judge Utz and myself and Mr. Sachs.

Q. When was that?

A. The morning of February 20th—19th, I mean.

Q. That is, on Thursday?

A. Friday. Friday was the 20th.

Q. Now, Mr. Kelso, didn't you say in your evidence upon yesterday that when you and Judge Utz and Mr. Sachs and Mr. Watts were in Judge Utz's court, or rather in his court room there, upon February 20th, that this discussion came up, and it was there that Judge Utz suggested that you withdraw of record and you did withdraw?

A. I may have said that but I was mistaken about that.

Q. What has refreshed you now that it occurred over in your office?

A. Well it just comes to my mind that that is where it occurred.

Q. You have no data, or anything particularly, that called it to your mind except that you now remember that it occurred over in your office?

A. Yes, there is so many things that occurred there that I am liable to get confused about these things, but I am satisfied it occurred in my office.

Q. Do you know it occurred there?

A. I think it did.

Q. Then you are not positive?

A. I think I am now, because it was prepared on a little type-written sheet of paper at my office and dictated to my stenographer.

Q. Then it was not in the order—

A. (Interrupting). Oh, no.

Q. (Continuing). That had been furnished by Mr. Watts?

A. Oh, no.

Q. As drawn up under his petition?

A. No sir.

Q. And it was furnished by you, and as you said dictated at your office?

A. Yes sir.

Q. And you think Judge Utz was there and suggested it?

A. I think he was.

Q. And you had it inserted by the Deputy Clerk in the record.

A. No, I didn't have it inserted; the court had it inserted. I couldn't control the records. I took it down there and the court ordered him to do it.

Q. Didn't you have as much right to have it inserted in there as any judge did to have it inserted in there?

The Court: That is not a proper question to the witness.

Q. Who was present at your office when Mr. Sachs suggested that that order be made in that way.

A. Mr. Sachs, Judge Utz and myself.

Q. Was Mr. Watts there?

A. No, he wasn't there.

Q. Where was he?

A. I don't know.

Q. Why didn't you tell us about this yesterday in telling us about what occurred in your office?

A. I wasn't asked about it.

Q. Well you were sworn to tell the whole truth, and the whole conversation that occurred there?

A. Yes.

Q. Why did you omit this?

A. Because my attention was not called to it particularly.

Q. It was not a matter of sufficient importance—

Mr. Keeling: (interrupting) I submit that is objectionable. He has already answered that he wasn't asked about it.

Mr. Smith: I don't think my question was completed.

Q. It was not a matter of sufficient importance to occur to you that it ought to be told?

A. No, it just escaped my memory, that was all.

Q. Do you say to the court now, that on yesterday, at the time that you were asked to detail the conversations and transactions that occurred in your office on that Friday, the 20th, that it didn't occur to you that this order had been made as you say now, at the instance of Mr. Sachs, and that the interlineation was made upon the record to conform to it in order to show that it was transacted during the existence of the term? You say that didn't occur to you?

A. I say it escaped my memory yesterday, or I would have told about it.

Q. You knew all the time Mr. Kelso that that was a wrongful act, and a forgery of the record, didn't you?

A. I thought it was.

Q. You were a party to it?

A. Yes sir, I was a party to it.

Q. And yet you had forgotten that important fact?

Mr. Kealing: I submit, your Honor, that he has already said that he had forgotten it.

The court: Yes, he has answered that.

Q. How do you change your statement of yesterday when you said that Judge Utz advised you in the court house, while in the court house, to withdraw your attorneyship of record for these parties?

A. Yes, I change that because I think I was mistaken about it.

Q. And you now think it was at your office?

A. Yes sir.

Q. What time of day do you think that occurred?

A. In the morning, forenoon some time.

Q. At what hour?

A. I couldn't say exactly what hour it was. Probably along about ten o'clock.

Q. Friday when these gentlemen came over from Louisville Mr. Kelso, is it not a fact, and hasn't it been so stated by you, that when they came over they went to Judge Utz's office and found you there?

A. Friday, yes sir.

Q. When they first came over?

A. Friday, no. Not Friday. Thursday is when they met me at Judge Utz's office. If I said they met me at Judge Utz's office Friday I made a mistake; they met me at my office.

Q. Judge Utz met you in your office?

A. He met me Thursday in my office.

Q. Didn't Judge Utz make an agreement with you on Thursday afternoon to see you at 8 o'clock Friday morning, and say that these gentlemen would come at nine?

A. No, he made an engagement with me Wednesday afternoon to meet me at 8 o'clock Thursday morning.

Q. And these gentlemen were to come over there?

A. Yes sir.

Q. Now where was it you say that Mr. Watts and Mr. Sachs first met you and Judge Utz on Friday morning?

A. At my office.

Q. How long did you remain there?

A. Oh we remained there some time, until the order—I think Mr. Sachs and I remained there all morning, until noon, when we called in the Deputy Sheriff and sent the Deputy Sheriff with the notices to serve on Mr. Moser, the President of the New Albany Trust Company, and Mr. Watts who was around at Goodbug's.

Q. This is Friday we are talking about.

A. I am talking about Friday also.

Q. You remained there all the forenoon?

A. I think so.

Q. And they remained in New Albany all day Friday?

A. Yes sir.

Q. Mr. Kelso when did you first meet Mr. Sachs and become acquainted with him?

A. Why, Wednesday the 18th of February.

Q. You had never met him or become acquainted with him before then?

A. Never had met him or seen him before, that I know of.

Q. I believe you said it was five o'clock on Wednesday the first meeting?

A. Yes.

Q. At your office?

A. Yes.

Q. You met then Mr. Sachs and Mr. Watts?

A. Yes sir.

Q. At that time do you say that you talked about the question of the jurisdiction of the Floyd Circuit Court?

A. Yes sir.

Q. And finally that you told them that you would agree to accept the receivership provided they agreed to indemnify you for costs and expenses?

A. Yes, sir.

Q. And there it was that you say that they did agree?

A. Yes, sir.

Q. Did you hear Judge Utz's evidence here yesterday?

A. Partially, yes.

Q. Did you hear Judge Utz say anything to the effect that he had not discussed the appointment of a receiver, or the removal of the trust company until the parties came over to see him, Messrs. Watts and Sachs on Wednesday, and that he didn't determine upon the removal until Thursday morning?

A. I heard him say that, yes sir.

Q. Well is that in accordance with your understanding of the facts?

A. No; well, I didn't understand it that way, any how.

The Court: That is not a proper question.

Q. You heard him say that?

A. I heard him say it, yes sir.

Q. Did you have any agreement with him to accept the receivership before this,—with Judge Utz?

A. No.

Q. Had there been anything said or done in regard to the appointment of a receiver before that time?

A. Except what these two gentlemen talked to me about on Wednesday afternoon.

Q. Then you did not know it was in the mind of Judge Utz to remove the New Albany Trust Company and to appoint you?

A. Oh yes, these two gentlemen said that the trust company was going to resign.

Q. Said that the trust company was going to resign?

A. And that Mr. Henry Jewett had agreed to hold the property until, the court could appoint a successor and send out there and take possession before it was turned over to the United States Court.

Q. Judge Utz had determined that he was going to appoint you as a successor, is that true?

A. No, I didn't say that.

Q. Is that true?

A. No.

Q. Then you don't know that Judge Utz had determined to appoint you at all?

A. No.

Q. Who suggested you?

A. Mr. Watts and Mr. Sachs, and discussed the matter as to whether I would take it or not, and I said I would.

Q. And it was on their suggestion that you agreed to take it.

A. Oh no; the court came around the next morning and I agreed to take it.

Q. That was the first time the court talked to you in regard to it?

A. These gentlemen were looking for somebody; they wanted to get somebody that wouldn't give way; like Mr. Watts and Mr. Jewett had given way up here in the court; that is what they said about it.

By the Court:

Q. They wanted somebody to make a fight?

A. Yes sir that is what they wanted to do.

Q. Against the authority of this court?

A. Yes sir.

Q. And you said you had no intimation from Judge Utz that he would appoint you, or that he would expect to appoint you before that time?

A. None except by the telephone call from him.

Q. That was making the appointment to see you the next morning?

A. Yes sir.

By Mr. Smith:

Q. Mr. Kelso, is it not a fact that at the time Messrs. Watts and Sachs came to your office that they told you that Judge Utz wanted to see all of the attorneys the next morning and had asked them to give you the right information?

A. No sir.

Q. It is not true?

A. No sir, it is not true.

Q. Isn't it true that you said at that time that you could not give the information to Mr. Stotsenberg because you were not on speaking terms with him?

A. No sir, that is not true.

Q. Is it not true that when the gentlemen came up in your office that they didn't sit down at all and that Mr. Sachs delivered the message, and then they left?

A. Oh no, they stayed there some time.

Q. Were you on speaking terms with Mr. Stotsenberg at that time?

A. Oh yes, yes sir

Q. Perfectly friendly with him?

A. Yes sir.

Q. And didn't tell these gentlemen that you were not?

A. No sir. Mr. Stotsenberg is looking after my business at home now.

Q. What time did these gentlemen consume in your office there on that Wednesday?

A. Why I think they stayed there probably half an hour. I caught the six o'clock car up home.

Q. Did they sit down?

A. Yes sir.

Q. Have you more than one office there?

A. I have three rooms.

Q. What office were they in?

A. In the rear one.

Q. Is that the way the stairway goes up?

A. The stairway goes up and faces the south, runs to the south, and they were in the south room of the building.

Q. You say Mr. Watts didn't do any talking up there?

A. Not much of it; no Mr. Sachs did most of it.

Q. And you relied upon Mr. Sachs although you had not known him, didn't know of his financial condition, and knew nothing of him whatever, a total stranger?

A. I knew the Sachs brothers reputation in Louisville as lawyers. That is all I knew about it. But I knew Mr. Watts; had known Mr. Watts for some time.

Q. Now did you telephone to them any more that Thursday, to Louisville to these gentlemen?

A. Thursday?

Q. Yes.

A. I only telephoned once to them on Thursday.

Q. When was that?

A. That was in the afternoon.

Q. Did you receive a telephone before these gentlemen reached your office, from any one saying that they were coming? On Wednesday I am talking about now?

A. Yes.

Q. Who was it from?

A. Henry Jewett.

Q. What did he say to you?

A. He said some gentlemen were coming around to see me.

Q. That you say was about five o'clock, and they stayed about a half hour?

A. Yes sir.

Q. Now on Thursday what time did they come to New Albany?

A. I should say it was along about half past nine o'clock.

Q. You were in consultation at that time with Judge Utz at his office were you not? according to appointment made on the previous afternoon?

A. I was there according to the agreement to meet these gentlemen there at nine o'clock the next morning.

Q. You had fully arranged between Judge Utz and yourself about your accepting the receivership?

A. Oh yes, I had agreed to accept it.

Q. They came over about ten?

A. About half-past nine; they made an appointment to meet me and Mr. Henry Jewett and the Judge there at nine o'clock.

Q. Who was with them when they came in there?

A. Mr. Watts and Mr. Sachs were by themselves together.

Q. Mr. Jewett didn't come in?

A. He didn't come in, no, not till he was telephoned for.

Q. I believe you say the conversation there was the general run of conversation, was still the jurisdiction of the Floyd Circuit Court?

A. As to how the court could retain the property.

Q. Then you say the next conversation turned upon the question of your executing a bond and of your accepting the trust and of your resigning your attorneyship in order to do so? Is that true?

A. No; no, the next thing that occurred was to telephone to Mr. Henry Jewett to come over.

Q. Now tell us the next that occurred?

A. He came over and said that he was busy at his office and that the colonel would come there and represent him. The colonel came over and then stated to the court that he would turn the property over. Mr. Sachs interrupted, and asked him if he had turned the property over, and Colonel Jewett said, "I don't want to be insulted," or interrupted—I

couldn't catch which word he used there; and he finally went away; and then these gentlemen, Mr. Sachs and Mr. Watts and Judge Utz seemed disappointed about it.

Q. Let me ask you at that particular juncture there if Mr. Sachs didn't then turn to you just as Colonel Jewett went out and ask you if you could not ascertain whether or not the property had been turned over?

A. Yes sir.

Q. And didn't you take up the phone to find out?

A. Yes I telephoned over to the trust company and asked Mr. Sauer if he had; he said he had.

Q. And didn't you announce the fact to the gentlemen assembled there?

A. I did indeed, yes sir.

Q. That the property had been turned over.

A. Yes sir.

Q. And Judge Utz was present at the time you made that announcement to them?

A. He was there.

Q. Now didn't Mr. Sachs then say to you and to the gentlemen assembled that that ends the matter; if the property has been turned over under the agreement and is now in the possession of the United States Court, that that ends the matter right there?

A. No he did not say that.

Q. Did he say that in substance?

A. No.

Q. What did he say?

A. He said that the Jewetts had went back on them; that is what he said.

Q. Well go on and tell all the matter?

A. That is all he said at that time.

Q. Now you haven't got down to the execution of the bond yet, or the directions about your acceptance?

A. Then these two gentlemen left and went to Louisville.

By the Court:

Q. What two gentlemen?

A. Mr. Watts and Mr. Sachs.

Q. Who was it said that Jewetts had deserted them?

A. Mr. Sachs. And they went to Louisville. I thought the matter was ended there. After dinner Judge Utz came to my office, and asked me to telephone Mr. Watts and Mr. Sachs to come back the next morning.

By Mr. Smith:

Q. That would be Friday?

A. And I telephoned them to come back and meet me at my office. Then the bond question came up after they had

agreed to the appointment of myself, the bond question was then discussed after that; we went around to Judge Utz office after dinner, and the bond question came up; they insisted that the bond ought to be small, and Judge Utz insisted it ought to be for $30,000.

Q. Now you say that the bond question was raised upon Friday for the first time?

A. After dinner, around at Judge Utz's office the amount of it.

Q. And you say now, instead of the question of your withdrawing was raised on Friday, but you said yesterday that that question was discussed late Thursday?

A. No I said that question was discussed on Friday, me resigning.

Q. What time Friday?

A. In the morning.

Q. That was on Friday that that was discussed, but not at the court house; at your office?

A. At my office on Friday.

Q. Was that before you came over to the court house on Friday, or had you been to the court house and returned to your office?

A. Oh no. I hadn't been to the court house.

Q. Had these gentlemen been to the court house before that discussion took place?

A. Not to my knowledge on Friday.

Q. Then after you had passed beyond what you yourself stated occurred at the court house, how did the conversation further progress, if there was any further conversation in the morning?

A. On Friday I am talking about.

Q. I am talking about the conversation on Friday?

A. I wasn't talking about the conversation on Friday at the court house about the bond question; we talked about that after dinner, and it was concluded to give the bond.

Q. What did you do Friday morning while the gentlemen were over there?

A. We discussed the law, and Mr. Sachs and I drew up this notice, and petitioned for the removal of the New Albany Trust Company.

By Mr. Kealing:

Q. At your office?

A. At my office.

By Mr. Smith:

Q. That was a typewritten petition?

A. Yes sir.

Q. Didn't you draw that petition?

A. I dictated it with the assistance of Mr. Watts who made some suggestions about it.

Q. Mr. Watts, you say?

A. Mr. Sachs I mean.

Q. Was Mr. Watts there?

A. He was there about noon, heard the paper read, knew we were getting up the papers to serve on him, and made arrangements to be at Goodbug's where the sheriff went and served it on him.

Q. Mr. Kelso, is it not true that Mr. Sachs was in a different room from where you were dictating that paper at the time you were dictating it, and didn't he come over to your office upon an invitation from you to go by your office until you fixed up some papers and then you and he would go to lunch together?

A. No.

Q. You did go to lunch from there?

A. Yes we went around and took lunch with Mr. Watts

Q. At the time of the drafting of the paper is it not true that you were in a different room from Mr. Sachs at that time?

A. No, I called the stenographer back in the room where we both were.

Q. Is it not a fact that you drew one paper, and afterwards tore it up, and afterwards presented a second paper to him

A. No.

Q. You didn't first tear up one that you had prepared?

A. No I think not.

Q. Is it not a fact that at that time that I have indicated when you came back to Mr. Sachs you said, as I am going to be appointed receiver in this matter it would hardly look right for my name to appear on record, and I want you to appear in this particular matter just by signing your name to the petition that the court had directed to be drawn.

A. No sir.

Q. Hadn't Judge Utz instructed you to bring the matter to his notice by a statement or petition showing the fact and the conduct of the New Albany Trust Company and to ask for their removal and punishment?

A. I think he had told us to do that, told Mr. Sachs and I

Q. Did he tell Mr. Sachs, or tell you?

A. Yes he told Mr. Sachs; Mr. Sachs was the leading spirit in the case.

Q. Altogether?

A. No not altogether; he was one; I wouldn't have gone into it if it wasn't for these gentlemen.

Q. Did Mr. Sachs have anything to do with the case at all until Mr. Watts and Mr. Jewett got into trouble with the Floyd circuit court?

A. Not at all; I think not.

Q. That was his first entry into the case?

A. Yes sir.

Q. You were in the case before that were you not?

A. Yes, I was in the case representing some creditors.

Q. You say you wouldn't have gotten into this, if these men hadn't come to your office to see you?

A. I mean Mr. Watts and Mr. Sachs and Judge Utz; if they hadn't; I had no interest in the thing.

By the Court:

Q. Would you have accepted the position if you had known it was to interfere with the jurisdiction and lawful possession of the receiver of the United States court?

A. I would not; no. The largest claim I had was only $3,000.

By Mr. Smith:

Q. Mr. Kelso, what induced you to take the risk of standing in contempt of this honorable court and render yourself liable to be punished?

A. Well I will tell you what induced me to do it, was particularly the request of Judge Utz, and then I felt if we would succeed in establishing the jurisdiction, I felt that we might get a pretty fair allowance from the Court.

Q. Then it was not entirely a friendly feeling toward these gentlemen, one of whom was a stranger to you, but it was from a money consideration?

A. It was more from the request of Judge Utz; I expected, of course, to be compensated for my services; there is no question about that.

Q. You say this bond arrangement took place on the afternoon of Friday, I believe?

A. Yes sir.

Q. You and Mr. Sachs and Mr. Watts, and Judge Utz and Mr. Joe Sachs were there at that time, were they not?

A. Joe Sachs came in there in the afternoon some time.

Q. He was there at the time you say the bond was fixed, was he not?

A. I don't know positively, but he was there some time during the afternoon; he may have been there at the time the bond was fixed; I wouldn't say that he was or was not.

Q. Now is it not a fact Mr. Kelso that a little between three and four o'clock that Mr. Joe Sachs invited you gentlemen to go out for refreshments and that you declined to accept because you said that Judge Utz had directed you to draft some papers?

A. I know I didn't go with them; I know he invited some gentlemen to go out and take a drink.

Q. Is it not a fact that at that time Judge Utz and Mr. Watts accepted the invitation?

A. I think they went away together.

Q. Is it not also a fact that Dave Sachs said that he wasn't feeling well and intended to wait for them in the court room until you gentlemen returned?

A. I don't think he said that; he went with me to my office.

Q. You say he stayed with you?

A. Yes.

Q. Stayed with you how late?

A. Stayed with me for some time until I prepared the entries I was working on. He assisted me in it. For instance the paper here in relation to the appearance of the Inland Steel Company by Mr. Hester was prepared in my office; I prepared an order that I thought was sufficient and Mr. Sachs said it wasn't strong enough; he interlined it so as to make it appear that Mr. Hester had entered a full appearance in the action pending in the Floyd circuit court.

Q. What time was that in the day, have you any idea?

A. I think that was in the morning some time.

Q. In the morning? We are talking about afternoon transactions now?

A. It was in the morning I was talking about.

Q. We were talking about the time Joe Sachs extended the invitation to go and get a drink?

A. Oh I beg your pardon; he went over to my office.

Q. Let's see if I can find something else that occurred on that afternoon?

A. He was sitting there and taking particular note of what I said to the stenographer and making suggestions.

Q. About what?

A. About the entries.

Q. Can you tell anything he said or remember anything about it? The court would like to hear what he said and did?

A. Why I remember we investigated the statute; he wanted to know what form of the statute we would follow, and I went down and sat in a rocking chair along side of him and looked up the statute relating to the recovery of this property; got down the statute relating to receiverships, and discussed the form of the writ, and all the papers were prepared there while Mr. Sachs and I were present. We then went out after we finished that; Judge Utz came to my office and looked them over and took the papers to the clerk's office, and Mr. Utz and I went to Clare's saloon on Pearl street.

Q. Is it not a fact that you didn't see Mr. Sachs after you left the court house that afternoon in order to draw up those orders until between six and seven o'clock, and about that time you passed along by the corner where Mr. Watts and Mr.

Sachs and Mr. Zier were standing talking, and you said you were on your way home?

A. No sir.

Q. Didn't you pass them there?

A. Who.

Q. Mr. Watts and Mr. Sachs?

A. On Friday we went from the corner of Pearl and Spring streets up to Seventh; Mr. Watts and Sachs and myself went from the corner up to Seventh street.

Q. I am not asking you about where you went. I am asking you isn't it true that you came up on these gentlemen at that place and that you hadn't seen these gentlemen from the time you left them at the court house when you went out to prepare the petition as directed by Judge Utz—that you hadn't seen them from that time until you met them there?

A. No, that is not true.

Q. And that was nearly half past six?

A. No, that is not true.

Q. They went home about what time?

A. It was after six o'clock; it must have been along about seven o'clock.

Q. What time did you make the demand upon Mr. Connor for this property?

A. I think it was about seven o'clock.

Q. What time was the property actually taken from the custody of Mr. Connor?

A. Along between eight and nine o'clock. I can't tell just when.

Q. Then Mr. Sachs and Mr. Watts were not in the city as far as you know at that time?

A. Not when the sheriff took the property. No sir.

Q. No, when you made the demand?

A. Well I don't believe they had hardly gotten out of the city; they may have been up at the depot at Vincennes street, but I don't believe they were out of the city.

Q. At least they were not with you?

A. They were not with me.

Q. They came back you say Saturday?

A. Yes sir.

Q. What occurred?

A. Well they came back to get up some proceedings by way of contempt against Mr. Connor and Mr. Hester, and along with Mr. Watts contempt proceedings also.

Q. Is it not a fact that they came back to respite the rule against Watts?

A. There was not any rule against Sachs.

Q. But was not Sachs acting as attorney for Watts and did you not know that that was the fact at the time and he

made a request of Judge Utz at the time to continue the rule?

A. Mr. Sachs was acting as my attorney.

Q. I asked you if you do not know it is a fact that he came back as attorney for Watts?

A. No sir.

Q. And that he himself made the motion before Judge Utz to continue that rule?

A. No sir I do not know that he did.

Q. He came back on Saturday and Watts did get the rule continued on that day until Wednesday?

A. Yes sir.

Q. Where were you and Sachs in the mean time while Watts was getting the rule continued?

A. We were first over to the Deputy U. S. clerk's office, looking for this absent order and then we went out and went through the Zier plant, that is the down stairs part of it.

Q. How far is the Zier plant located from Judge Utz's court room?

A. About four squares.

Q. What time of day was it you say Mr. Watts went with you down there?

A. I didn't say Watts.

Q. Sachs?

A. I judge along about three o'clock in the afternoon.

Q. How long were you away from the court house or away from Mr. Watts before your return?

A. Well, we went down and went through this plant, that is the downstairs part of it and looked around over it. We were gone twenty five or thirty minutes.

Q. Who was with you?

A. Mr. Sachs and I went together and the watchman was there, Mr. Smithwick, when we got there.

Q. Mr. Smithwick?

A. No sir, Mr. Ruoff, the day watchman was there instead of Mr. Smithwick.

Q. Where did you go when you returned from that inspection?

A. We went to Mat Claire's saloon and we sat down there.

Q. Did you go back to the court house after that?

A. I do not remember whether we did or not. I don't believe we did.

Q. Where did you get with Mr. Watts?

A. Mat Claire's saloon.

Q. Did they leave from there for home?

A. Yes sir.

Q. What time?

A. I think along about five o'clock.

Q. Then you had another meeting on Sunday?

A. Yes sir.

Q. You were cited on Saturday night about 9 o'clock?

A. Yes sir.

Q. You telephoned Mr. Sachs?

A. Yes sir.

Q. Did you tell Mr. Sachs anything about his being included in that citation?

A. Yes sir.

Q. You are quite sure of that?

A. I am certain about it.

Q. You asked Mr. Sachs to come over next morning?

A. Not then.

Q. When was the arrangement made for him to come over Sunday morning.

A. After I was called down to Judge Utz's office.

Q. That was Saturday night?

A. The same night.

Q. Then you called him again?

A. I did not call him. I sent word out by a young man there to telephone over. I think it from Kepley's stable.

Q. Did you send to Watts and Sachs?

A. I think both.

Q. You requested them to come over, at any fixed time?

A. Ten o'clock.

Q. That was the time you went to the court house and then adjourned to your office.

A. Yes sir.

Q. Then the matter was discussed about the preparation of the response to these citations?

A. To the rules.

Q. Was that the only discussion that occurred there that day?

A. I think so.

Q. Then on Monday you came over to Mr. Sachs' office by appointment.

A. Yes sir.

Q. You got there before Judge Utz, did you not?

A. Yes sir.

Q. He did not come there until afternoon?

A. He did not get there until after dinner?

Q. You got there between ten and eleven o'clock in the morning?

A. Yes sir I think so.

Q. What did you talk about in the forenoon, anything except a general discussion about the jurisdiction of the court and the nature of the responses to the rule.

A. I took a copy of the order I had prepared from the clerk's office, that was discussed and the affidavit upon which the rule was based was discussed. I had that with me.

Q. Did not Mr. Watts tell you to bring that copy over with you?

A. No sir, Mr. Sachs did.

Q. He told you it would be necessary for you to wait until you could get a copy and bring it over before he could tell you anything about the nature of your responses.

A. Yes sir.

Q. When you showed it to me, did he not tell you you had no response to make at all?

A. No sir.

Q. What did he say?

A. He did not say much of anything. I tried to get him to make up my response and he concluded that he could not do it, that he could not act as my attorney up here, that if he came up here, he would be put on the witness stand and have to say something against his friend Watts. He advised me to come to Indianapolis and get an attorney and finally I told him I was going to get one.

Q. Did you not say awhile ago in your examination that about five o'clock Hester told you he had the order and you phoned the contents of it to Sachs and he said you are done for.

A. Yes sir I said that.

Q. Sachs then over the telephone notified you of the fact that if that order was entered it was a settlement of the question and you were done for?

A. Yes sir he said that over the phone.

Q. That was on Sunday night.

A. Yes sir.

Q. Before the Monday morning visit?

A. Yes sir.

Q. When you got over in the office and he read the order, did he not tell you the same in effect?

A. No sir.

Q. Didn't he tell you the best thing you could do under the circumstances was to go to Indianapolis and see if you could not make a settlement of the matter with the court?

A. No sir, he said I had better get a lawyer at Indianapolis, and advised me not to get Mr. Newberger, because he did not think Mr. Newberger was the right kind of a man for this kind of a case.

Q. By the Court: Did he say what the right kind of man for this case was?

A. No, sir, he did not. What he said was that Mr. Newberger was not the right kind of a man.

Q. By Mr. Smith: Was not Morris Sachs in Mr. Sachs office at the time this order was submitted by you to Dave Sachs?

A. In the morning he was.

Q. I mean at the time the order was read?

A. I think he was there.

Q. What did Morris Sachs say about it?

A. He said we thought we had acted the fool about the matter, but he said notwithstanding that he felt that the circuit court had jurisdiction.

Q. That was simply going back to the original question of jurisdiction.

A. Yes sir.

Q. Did he not tell you that was no response to a matter like this?

A. No sir he did not say that.

Q. Or in substance anything like that?

A. Not that I remember. He may have said it.

Q. He was in there and did discuss it?

A. Yes sir and there was a good deal of talk back and forth.

Q. How did that question of costs or any contemplated costs arise in that meeting?

A. That came up late in the afternoon, when I asked them what they were going to do about the costs.

Q. Did you not at that meeting and while Mr. Watts was absent ask Joe Sachs if he thought Watts ought not to stand for it or something of that sort?

A. No sir.

Q. Did you not address your remarks in regard to that matter to Joe Sachs entirely?

A. No sir.

Q. Did you include anybody that you thought ought to be made responsible for the costs or liable therefor except Mr. Watts?

A. Yes sir.

Q. You mentioned Mr. Sachs' name?

A. Yes sir.

Q. You called both of them by name at the time?

A. I probably used the word "they" had agreed. I may not have said "Watts and Sachs."

Q. Did not Joe Sachs say to you at that time that if you were going to discuss the question as to Watts you had better have Watts present and did he not say that he would go in the other room and phone him?

A. No.

Q. Nothing of that kind occured?

A. I heard nothing of that sort.

Q. You say that Watts did come there in a few minutes thereafter?

A. I said Mr. Watts came there. I did not say he came a few minutes after, any such statement as you have just made.

Q. He came over in the afternoon?

A. He came over in the morning and afternoon both.

Q. But you and Dave Sachs and Morris Sachs were in the office there sometime in the afternoon before Mr. Watts did come in? And Joe Sachs?

A. I think we were yes sir.

Q. Did not Judge Utz in that conversation when you were talking about the question of cost of defending these rules say that it would cost several thousand dollars and did not Judge Utz say he had money in court that could be used on the matter?

By Mr. Kealing: Where was that?

Q. At that same Monday interview.

A. No sir he did not say that.

Q. What time was it on Monday that Judge Utz came over?

A. I do not know what time he came over. He was there at the office after D. A. Sachs and I returned from lunch, sitting there by himself.

Q. How long did you gentlemen remain there? In the afternoon?

A. I think along until half past four o'clock.

Q. You know John Watts?

A. Yes sir.

Q. He was there in the morning of that Monday's interview, was he not?

A. He was.

Q. Did not John Watts early in that interview in the morning say to you "Mr. Kelso, I want to know if you know of any act or anything done on the part of my brother W. W. Watts, that in the slightest way indicated after his return from Indianapolis that he desired the state court to try to retain the possession of this property or in any way further interfere with the jurisdiction of the Federal Court?

A. Yes sir he said that to me.

Q. Did you not tell him you did not know of any act or transaction at all?

A. No sir.

Q. Or to that effect?

A. No sir I told him just what his brother had done.

Q. Didn't you tell him that you did not know anything he had done to the effect and that you were willing to give an affidavit to that?

A. No sir.

Q. Was not that matter mentioned again in the afternoon after Judge Utz was present? And was not the same question put to Judge Utz in your presence by John Watts?

A. Something of that kind was said, yes.

Q. And did not Judge Utz make the same statement to John Watts in regard to W.W.Watts, as you had made, that is that he did not know anything at all that would indicate after the return from Indianapolis that W. W. Watts was trying to get the state court to retain possession or advising the retention of possession by the state court or the taking of the property from the U. S. court receiver?

A. I never said any such thing.

Q. Did Judge Utz say it?

A. No sir.

Q. What did you say?

A. I told him about what his brother had done, that his brother was all the time protesting about it and saying that he desired to turn the property over to the United States Court according to his promise, but that notwithstanding those things, he was advising about the law and giving his opinion that the law was against the contention of the U. S. Court. I told his brother that.

Q. Is that all you told him?

A. Practically so yes.

Q. Was it not immediately after this conference in the afternoon that John Watts asked that his brother withdraw from the conference?

Q. I do not know whether that occurred in the afternoon or morning about the withdrawal from the conference.

Q. Whether it occured in the afternoon or morning, did it not occur at one time or the other just after John Watts had asked that question either of you or Judge Utz?

H. I cannot say in regard to that, but I know that he did suggest that his brother retire from the meeting.

Q. There is one mat'er that I neglected to ask you in regard to that I want to understand more fully. You say you employed Dave Sachs to represent your trust, that is your receivership?

A. Yes sir, to represent me as receiver.

Q. As receiver of that estate?

A. Yes sir.

Q. When was that employment made?

A. Friday.

Q Where?

A At my office

Q. That was the first suggestion of it?

A. Yes sir.

Q. Who was present?

A. Judge Utz, Mr. Sachs and myself.

Q. Where was Mr. Watts?

A. He was out somewhere, I do not know where.

Q. I will ask you if it is not a fact that you on Friday said to Mr. Sachs I would like to employ you to represent my trust, and that Mr. Sachs said to, "I have got all the business I can attend to in Louisville and I do not desire to appear here. I simply come over here to represent my friend in this matter and they have a good bar here and if you cannot get a lawyer that suits you here you can go to Indianapolis, there are men of ability there." And if you did not remark "I don't know whether I need a lawyer or not. I am a sort of lawyer myself and I reckon I can attend to this without any lawyer anyhow."

A. No sir. I made no statement, but on the contrary I said to Mr. Sachs that Judge Utz and I had discussed the question of whether we would come up here and employ Charles Smith and we had concluded to employ Mr. Sachs as he had been through several bankruptcies and he said he did not want to force himself in, but if I desired he would accept the employment and stay with me to the end.

Q. What retainer did you pay him?

A. I did not pay him any.

Q. You gave him no indemnity for fees in any way?

A. No sir, I understood that Mr. Sachs was rather representing Mr. Watts in trying to keep the possession of this property in the Floyd Circuit Court

Q. We do not care for your understanding except you give us the facts on which you base it.

A. I cannot give you any other facts that I have stated.

Q. You had paid him no fee?

A. None at all.

Q. You had executed no obligation to him promising any fee?

A. No sir.

The Court: That is repetition, you are consuming too much time in that way.

By Mr. Fairleigh:

Q. After Mr. Watts' return from the meeting before this court on the 16th and 17th of February, did you hear him say or do anything or advise anything which would indicate that he did not intend to do everything to have the property turned over to the New Albany Trust Co. to Mr. Connor the receiver of this court?

A. All I can say is this: that I heard Mr. Watts declare that he intended to carry out the promise he had made to the U. S. Court; but I heard Mr. Watts give expressions of his

opinion as to the law which was contrary to the law as laid down by this court quite frequently.

Q. But he always said and his acts always indicated that he really intended that the New Albany Trust Company so sar as he was concerned, as its attorney or otherwise, should turn over that property to Mr. Connor receiver.

A. I do not know what his acts indicated. I am not ready to give any opinion on that proposition. But Mr. Watts did declare that he intended to turn the property over, but he would give opinions contrary as to the law all the time.

Q. Do you know of any acts he did other than giving his opinion of what the law was touching the retaking of the property by you as receiver from Mr. Connor as receiver?

A. No sir.

Q. He did not do anything at all, except simply to express his opinion of what the law was?

A. That is all I know of except that he agreed to pay my expenses at one time.

Q. What do you mean by that?

A. I mean that he said if I was at any expense in this matter that he and Mr. Sachs would see that it was paid.

Q. Where was that?

A. At my office.

Q. What did that involve?

A. I suppose it involved whatever expense I might be put to if I was guilty of contempt of this court.

Q. What were you expecting to do at that time?

A. To contest the jurisdiction of this court?

Q. How?

A. I don't know how.

Q. Was it in his mind that you should use any force of any kind?

A. Not that I know of.

Q. Was it in your mind?

A. No, sir.

Q. That was not in contemplation of the parties at all at that time?

A. Not to my knowledge?

Q. You had no suspicion, no sort of notion that that would occur at that time?

A. No sir, I thought there would be lawsuits or something of that kind.

Q. Exactly, but was it not suggested that the proper way was to intervene in this case and have the question decided?

A. I don't think anything of that kind was suggested.

Q. Was not that the idea?

A. I don't know what the idea was, but it was not suggested.

Q. But there was no intention by anybody that you should take it by force.

By the Court:

Q. When was the determination arrived at to take it by force?

A. After the New Albany Trust Company had turned it over to the receiver. The understanding was that the New Albany Trust Co. was to hold the property until I could be appointed receiver without any trouble before this court got possession.

Q. Did Mr. Watts know that.

A. I do not know whether he did or not.

Q. Was he present when that was talked about?

A. I don't think he was.

Q. By Mr. LaFollette: You stated awhile ago that after you were requested to become receiver you suggested as you appeared of record as an attorney for some of the creditors of M. Zier and Company that you could not while such attorney be the receiver, and that it was then suggested to you that you withdraw from that and that such an entry was made and attached to the entry that had been made bearing date the 14th, I think, of February?

A. Yes sir.

Q. And that that was entered as of that date?

A. Yes sir.

Q. As a matter of fact it was not done on that date?

A. No sir it was not.

Q. Who is your clerk?

A. Charles B. Scott.

Q. Do you know the signature of your clerk?

A. I do.

Q. You may examine that certified copy and the signature thereto and state whether or not that is the signature of the clerk of the Floyd Circuit Court?

A. No sir, this is not Mr. Scott's signature: this must be the signature of one of the deputies.

Q. And examine and from your knowledge state whose signature it is.

A. I should say that Edward Martin put that signature there.

By the Court:

Q. Is he a deputy clerk?

A. Yes sir.

Q. By Mr. LaFollette: And from the signature thereto you would say that this certificate of the clerk and the signature as it appears is official?

A. I think so.

Q. By the Court: Of the proceedings of Februray 14th?

A. I think this includes some other proceedings prior to that time.

Q. But including the proceedings of February 14th?

A. Yes sir, it includes the proceedings of February 14.

By Mr. Fairleigh: Is there any doubt of that?

The Court: There are two different records here. It shows that the records of the Floyd Circuit Court were mutilated. The clerk of the Floyd Circuit Court has made two certificates, one to one state of facts and another to another. One of these contains considerably more than the other. The closing paragraph of this record appears as follows:—"And Jacob Hoerter and George H. Hester, such attorneys, being now present in court and Hester having been heard in opposition to said petition and having notice of the entry of this order, it is now ordered that no other or further notice be given the said Inland Steel Company, the Dey Time Register Co. petitioners in said bankruptcy proceedings." Now that is certified as a true and complete copy of the proceedings.

Mr. Miller: We have a certified copy of that record with the certificate just as you have there, dated the 14th.

The Court: Then in this other certificate immediately following is this,"And comes now C. D. Kelso and asks leave to withdraw as attorney of record for the following-named parties, United Gas and Electric Co., United States Tube Co., the Indiana Water Company and Simon David; and the court now permits the said C. D. Kelso to withdraw therefrom." That is the end of this record and then follows the certificate.

By the Court:

Q. Is that the part that was put into that entry as of the date at Sachs' suggestion because he wanted a record?

A. Yes sir.

Q. And that is the point you referred to awhile ago that was made on the 20th and added to the record as it had been made up formerly and caused to appear as part of the record of the 14th and while the court was still in session?

A. Yes sir.

Q. What is the date of that?

A. The 14th.

Q. What is the date of the second?

Mr. LaFollette: The date of the certificate is the 20th of February, but it purports to be a record of the 14th of February.

Mr. Kealing: One certificate is dated the 14th and the other the 20th.

Mr. LaFollette: And this record that has not the addenda was filed in the U. S. District Court on the 16th of February.

The Court: And the other was filed in this court on the 21st day of February.

Q. At the time that these matters were being discussed in your office along about the 19th and 20th of February, there was something said about your being invited to go down to some cafe or saloon on the street. Did you go with the company?

A. No sir, not then.

Q. You did not go?

A. No sir.

Q. Did you go to that place afterwards?

A. Yes sir.

Q. Whom did you find there when you did go of these parties if you did go if any of them?

A. I think I found Mr. Watts there and Joe Sachs there —I went with D. A. Sachs and I think Judge Utz was there.

Q. Did you have any talk there in the room where you went about these proceedings?

A. Oh I think the law was discussed but most of the time was spent in lstening to some stories being told there.

Q. Was there anything additional there said in regard by any one in regard to the proceedings that had been had in the court before Judge Utz?

A. The reason why the matters were delayed was because we were waiting on the Trust Co. to make up its report. The Trust Co. had agreed to make up a report just as soon as it could and it finally brought in a little piece of paper about that long showing the trust estate was indebted to it in about the sum of $23.00.

Q. Was that accepted as the report or refused by Judge Utz?

A. It was not accepted and they promised afterwards to make a detailed report.

Q. Was anything said to you during the proceedings by Henry Jewett the vice-president of the Trust Company in regard to your proceedings?

A. Yes sir.

Q. What did he say?

A. Saturday morning at the postoffice he met me and said we have taken up too much time discussing the law, that we ought to have sent the sheriff and taken the property before it was delivered.

Q. What if anything did Charles L. Jewett say to you about it?

A. We were sitting in Mat Claire's saloon and he came up out in the little recess in the back part of it and said that he was surprised that Judge Utz did not catch his eye, that he wanted him to send the sheriff out there and get the property before it was delivered.

Q. What did you do if anything, in the way of making an affiidavit against the receiver appointed by the U. S. Court and at whose direction did you do that if any one?

A. Judge Utz. I made the affidavit against Mr. Connor at the request of Judge Utz.

Q. Did D. A. Sachs say anything to you about that?

A. He said it ought to be done.

Q. Then you made the affidavit?

A. Yes sir.

Q. Was Mr. Watts present at that time?

A. I do not know. I do not believe he was. Mr. Watts did not spend a great deal of time with us.

Q. Was there anything said to you about including in that affidavit Mr. George Hester who had appeared as attorney for one or more of the parties in the bankruptcy proceedings?

A. And I declined to make him in it. I refused to make the affidavit against him.

Was that conversation had at the same time when Mr. Sachs was present?

A. Yes sir, I think so.

Q. What, if anything, did Mr. Sachs say about that?

A. He said we ought to get Hester.

Henry E. Jewett, recalled, and examined by Mr. La-Follette, testified as follows:

Q. State whether or not the New Albany Trust Co. as receiver for M. Zier & Co. had in its possession all of the property of M. Zier and Company?

A. So far as the Trust Co. knew.

Q. Had you made an inventory of the property?

A. Yes sir.

Q. And from whom did you get the information as to its being the entire property of M. Zier and Company?

A. I did not assist in making the inventory, it was made by two appraisers and Mr. Urey, the secretary. I was informed that the secretary went over the plant and furnished the information.

Q. There was no other property came to your notice or knowledge after that?

A. I do not remember any.

Cross-examined by Mr. Miller:

Q. You were here on the 16th and 17th with Mr. Watts?

A. Yes sir.

Q. I wish you would tell us what was done and said here at that time.

A. I could hardly undertake to tell all that was said.

Q. I don't want it in full, but just tell the general tenor of it, of course, not for the instruction of your Honor, but

because we want it in the record. I have no hesitation in saying with perfect candor that we want to show that these gentlemen went away from here with the impression that this court was satisfied it had the jurisdiction and it proposed to coerce to the enforcement of that jurisdiction if necessary. If that general fact is admitted, I do not care to ask any questions:

By the court: Whom do you expect to admit it?

Mr. Miller: The gentlemen on the other side. They are representing the prosecution here. I suppose the case is like any other where there is a prosecution on the one side and the defense on the other.

The Court: I will cut it short this way. You may ask him as to what their impression about it was, but these proceedings in this court took all of one afternoon, beginning at three o'clock and lasting three hours and a half and lasting all the forenoon of the next day. You may ask him what impression he had, but it will take too much time for him to detail what was said.

To the Witness: You heard my statement. You may state what were the impressions you carried away with reference to whether this court was satisfied that it had jurisidiction and proposed to enforce its jurisdiction in the taking of that property if necessary.

A. I understood this court was satisfied it had the jurisdiction and that the state receiver would be expected to give up the property. I took no part in the first day's proceedings at all. In the morning I stated that the Trust Company would turn over the property to Mr. Connor as receiver of the Federal court.

By Mr. Miller:

Q. Did you not understand what you have stated, that this court was prepared to and would enforce its jurisdiction by taking the property out of the hands of the state receiver, if necessary?

A. I think the court stated that he did not want to come to New Albany with a club, but if necessary he would have to do it to sustain the jurisdiction of this court.

Mr. LaFollette: I want to introduce the certified copy of the transcript of the proceedings in the Floyd Circuit Court which was filed in the U. S. District Court on the 16th day of February, 1903, as bearing the certificate of the clerk of the Floyd Circuit Court under date of February 14th, 1903.

Mr. Miller: Let me ask you if that differs from the other transcript purporting to cover the same proceedings except in the addenda to the order of the 14th.

Mr. LaFollette: I think they are the same except that I want to introduce this other transcript.

Mr. Miller: As to that you may say you just want to put in the addition to that order.

Mr. Kealing: Just introduce the certified copy.

Mr. Miller: I do not think the court ought to allow duplicate records.

The Court: In this instance the proceedings of the Floyd Circuit Court are somewhat on trial. Here is a certified transcript with a certificate of the clerk that certain proceedings were had. Six days later some additional proceedings appear. You yourself characterized that as a forgery of the record, during this morning. Now it is proposed as I understand it to show that that forged record was certified with all the authority and solemnity that the genuine record was. This court is interested in knowing how far the proceedings down there were fraudulent.

Mr. Miller: I have no objection to the District attorney making a statement which shall go into the record showing the fact that your honor has stated.

The Court: That might be sufficient, but the record is the best evidence.

Mr. LaFollette: The question is whether the whole record or so much of the record that shows the order that purports to have been made by the Floyd Circuit Court on the 14th should go in? I am free to say that my idea now would be to introduce that part of the transcript that was filed on the 21st day of February that shows the order of the 14th, and the certificate thereto.

The Court: That is all I have admitted.

Mr. Miller: And to that I have no objection.

Mr. LaFollette: That I desire to offer, which includes the addition made to that record as testified to by Mr. Kelso and the certificate that appears to that.

Then I want to introduce further a copy of the writ addressed to the Sheriff of Floyd County which is attached to and is a part of the pleadings which is marked "copy" and purports to be a copy of the writ issued by the Floyd Circuit Court and which is a part of the last page of the record filed in this court on the 21st of February, 1903.

I desire to introduce in evidence that part of the exhibit B filed with the response of William W. Watts in this case, entitled Joseph T. Ryerson & Son, vs. M. Zier & Company in the matter of the receivership of said defendant, M. Zier & Co., New Albany Trust Company receiver, and reads, at the beginning, "now comes the United States Tube Company, by D. A. Sachs, its attorney and so forth" and is signed "respectfully submitted, United States Tube Company by D. A. Sachs, its attorney," and sworn to by D. A. Sachs, on the 20th day of February, before Bertha L. Scott, Notary Public.

The Court: What is that?

Mr. LaFollette: This is the petition which was filed in the Floyd Circuit Court, not in the court, before Judge Utz on the 20th of February, asking the removal of the New Albany Trust Co. as receiver and also that it be cited to appear and show cause why it should not be punished for contempt and that it be required to file its account immediately and turn over to its successors all the property it now has in its hands as such receiver belonging to said M. Zier & Co.

The Court: Do you object to that?

Mr. Fairleigh: Not at all. We expect to introduce all of that record. That is filed with our response as part of it.

Mr. LaFollette: We also introduce in evidence a certified copy of the adjudication of M. Zier & Co. as bankrupts.

Mr. Fairleigh: We object to that. When was that?

Mr. LaFollette: On the 9th of March, 1903.

The Court: You object to that?

Mr. Fairleigh: It cannot affect this transaction as it occured afterwards. It was a potentiality at that time, but it had not been done.

Mr. Miller: In some of the decisions, the court at some length goes on to show the difference between the present law and the law of 1867 in that it is held that the title of the property does not pass at the adjudication under the present law whereas it did pass under the old law at the time of filing the petition. I do not suppose it can do much harm one way or the other.

The Court: Then why take up time discussing?

Mr. Fairleigh: It is not necessary to encumber the record.

The Court: I am not sure but what the entire record of the bankruptcy proceedings ought to be introduced in evidence.

Mr. LaFollette: We offer in evidence the files, petitions and orders in the bankruptcy proceedings of M. Zier & Co.

Mr. Fairleigh: Up to when?

Mr. LaFollette: Up to the adjudication?

Mr. Fairleigh: We object to so much as includes the the orders made in the bankruptcy proceedings after the citation. As to the other we have no objection.

Mr. LaFollette: I think there would be force in that when we offer the adjudication. While it is for some purposes only an adjudication from the date it is entered, still it relates back to the time of the commencement of the proceedings as to the question of his being a bankrupt.

Mr. Fairleigh: We do not want to make any further objection.

The Court: You must either withdraw the objection or Mr. LaFollette will be heard.

Mr. Fairleigh: We cannot withdraw it.

Mr. LaFollette: The reason why that should be included and allowed is that the judication for some purposes and for purposes pertinent to this inquiry relates back to the time of filing the petition in bankruptcy and I think all ought to go in the record.

The Court: You have nothing further to say, but stand on your objections?

Mr. Fairleigh: I have nothing further to say.

The Court: Objection overruled.

Mr. Miller: We reserve an exception. The Government here rested.

W. W. Watts, called in his own behalf, being duly sworn and examined by Mr. Farleigh, testified as follows:

Q. You are Wm. W. Watts, defendant in these proceedings?

A. I am.

Q. Where do you live?

A. Louisville, Ky.

Q. What is your occupation?

A. I am a lawyer.

Q. Practicing lawyer?

A. Practicing at Louisville.

Q. How long have you been practicing law?

A. Since the fall of 1886, I think.

Q. I wish you would tell the court the circumstances attending your employment as attorney of Joseph T. Ryerson & Son, out of which grew the institution of the suit in the Floyd County, Indiana, Circuit Court, in the name of Joseph T. Ryerson & Son against M. Zier and Co?

A. It was on the morning of the 30th of December, 1902, that Mr. Jackson, whom I should say was an assistant credit man to Ryerson & Son, came into my office at Louisville and employed me to take charge of the claim of Ryerson & Son against M. Zier and Company at New Albany, and discussed with me what should be done. After that discussion I telephoned for Harry Jewett and he finally came over to the office and I told him we were going to apply for a receiver, and he finally said he thought there was nothing else to do but to have a receivership.

Q. Harry Jewett represented M. Zier & Co. as you understood it?

A. Yes sir.

Q. Suit was filed accordingly?

A. Suit was filed accordingly.

Q. On that day?

A. On that d y before Judge Utz sitting in chambers, and a receiver appointed, qualified and possession taken on that day.

Q. As the record shows. When did you learn that a petition in involuntary bankrupty had been filed in the United States District Court for the District of Indiana against M. Zier & Co. by the Inland Steel Co. and others?

A. I think it was only a day or two prior to the 13th of February last.

Q. When did you learn that the United States District Court in that bankrupt proceeding had appointed a receiver for the property and assets of M. Zier & Co.?

A. It was either on the 12th or on the 13th; because on the 13th I went over to New Albany to look over the situation and see what was to be done. I am not sure whether I knew of the receivership on the 12th or whether it was on the 13th that I learned it after I got there, but I went over for the purpose of the bankruptcy proceedings.

Q. When you got over to New Albany on the 13th, what did you learn with respect to the appointment of a receiver in the Federal Court?

A. Mr. Connor had been appointed receiver and wanted possession of the property and that brought about a clash which I then undertook to avoid.

Q. That was on the 13th that you learned that? Mr. Connor was in New Albany?

A. Yes sir.

Q. Was he in New Albany on that day or not?

A. I think he was.

Q. Do you remember whether you saw him on that day or do you know?

A. I am not certain whether I saw him. I spoke with Harry Jewett about it and I believe Mr. Jewett said he had seen him.

Q. Tell the court all you did about it?

A. I was at the office of Messrs. Jewett and Jewett and I first asked Harry Jewett what he thought of my telephoning to Judge Anderson and finally asked Col. Jewett and Col. Jewett said he thought it was the proper thing to do and I finally, over the long distance telephone made connection with Mr. Butler's office, that is the office of the clerk of this court—Do you want the details of that matter?

A. Yes.

Q. I asked that Judge Anderson be called to the telephone and Judge Anderson declined to come, so Mr. Butler said. I then told Mr. Butler that the appointment of a receiver in the Federal Court had brought about a clash of jurisdiction, which I thought ought to be avoided, and I believed Judge Anderson was not acquainted with all the facts and I wanted to come up to Indianapolis after getting some proper order from Judge Utz for the purpose of pre-

senting the matter to Judge Anderson so that he could see the facts as they were. Mr. Butler reported back to me after I held the telephone for some little time that Judge Anderson would see us on the Monday following, would see us, and that I should notify Mr. George H. Hester, one of the attorneys in this matter, of that fact.

Q. Did Mr. Hester represent the receiver?

A. Yes sir.

Q. Of the Federal Court?

A. Of the Federal Court and also these petitioning creditors in the banruptcy matter and some of the creditors in the state court matter. I immediately went from the telephone to the stenographer in Mr. Jewett's office and dictated a notice to Mr. Hester notifying him that I had telephoned as stated in substance and effect and further that Judge Anderson would not insist upon the enforcement of the order until we could be heard on Monday, and in the meantime I would go before Judge Utz and get some proper order—I don't remember exactly the wording of it, but it was substantially that. The notice has been heretofore filed in these proceedings and of course it speaks for itself. I also went to Judge Utz in chambers, I believe, or perhaps in his court room, and told him what I had done and told him that I had said over the telephone that I was to come before him and get some proper order and he said, "I think that is a right proceeding. I do not think Judge Anderson has been fully advised and I think it would be proper to follow that course. I felt that I was the attorney for Judge Utz's receiver and I was bound to submit a matter of that kind to him. I then went back home.

Q. Back to Louisville?

A. Yes sir. And I prepared—I believe I first ordered practically an entire copy of the record as it stood. I ordered a good many parts of the record and I then went to my office at Louisville and worked on the petition to be filed before Judge Utz and the order and pleadings that were to be filed up here before this court. On Saturday morning I went over to Judge Utz's court and as I got into the court room Harry Jewett said, "Here is a petition"—

Q. Was the court in session?"

A. Court was in session. "Here is a petition which Mr. Hester has filed and you should look at it." I looked at it and found a petition of Mr. Connor as receiver under the order and appointment by this court in which he set forth the order of his appointment and qualification and also sought the property that was in the hands of the State Court receiver. That petition has disappeared. It is not in the record down in the Floyd Circuit Court and I can not state

exactly what that petition shows, but as near as I remember it, what I have stated was in substance its contents.

By the Court:

Q. You say that Mr. Jewett handed it to you?

A. Yes sir.

Q. What did you do with it?

A. I read it over and there was something about it—I had just been through a case where the question was up—a similar question—and I wanted to know what position Mr. Hester was going to take with respect to that petition. I felt that if it was a general appearance there was no occasion for coming before this court. If it was not a general appearance, but a special appearance, then perhaps he would have to come before this court and I arose to my feet and stated to Judge Utz the fact that that petition had been filed.

Q. Was Mr. Hester there?

A. Yes sir. And thereupon I asked Mr. Hester to say whether his pleading constituted a general appearance or a special appearance. Mr. Hester declined to do it, saying that the paper spoke for itself. I then submitted to the Court or filed the petttion which I had and which had been verified.

Q. Was there any restriction of the petition of Connor filed by Mr. Hester?

A. I think not.

Q. (By the Court): Any what?

Mr. Fairleigh: Any protestation or restriction as to limited appearance.

Q. (By the Court): You said Harry Jewett handed it to you and it disappeared. I want to know what you did with it?

A. I took it before Judge Utz, argued it and left it there. Gave it to the clerk and when I went back from here and asked for the petition I was informed that Mr. Hester had taken it. That petition was called for here in this court several times, but it could not be found.

By Mr. Fairleigh:

Q. You filed a petition you had prepared before Judge Utz on that day?

A. Yes sir.

Q. And took the order which the record shows?

A. Yes sir. And thereupon I brought with me a certified copy of that petition and the order thereupon and filed it before his Honor Judge Anderson in this court and a pleading showing the facts with respect to the matter down there and showing in effect the order of that court and filing divers certified copies of that record, beginning with the filing of the petition of Ryerson & Son originally for the appointment of a receiver, the order on that petition, and the

report and petition of the New Albany Trust Co. receiver filed on January 16th upon which there was a subsequent sitting of the Court on January 24th when all of the creditors were present and the order made at that time and the several notices, two notices I believe to the creditors in this matter. I filed all those papers before this court and we began argument of the matter about two o'clock in the afternoon. Do you wish me to proceed?

Q. Proceed right along.

A. I argued the matter from about two o'clock in the afternoon until about half past five and then took it up in the morning about nine o'clock and continued for a while, whereupon Mr. Hester took up the argument and Harry Jewett addressed the court about noon and we adjourned for lunch and at two o'clock we were back before the court. A question arose early in the argument as to my having been guilty of a great discourtesy to this court. I disclaimed any intentional discourtesy to the court and after arguing the matter for all the time that we did argue it, finally after Harry Jewett had said—after he had discussed the matter—

Q. In what point was it regarded that you had been guilty of a discourtesy, in what respect?

A. His Honor Judge Anderson thought I had been guilty of a discourtesy to his court because I had obtained in effect a truce in the proceedings.

By the Court:

Q. On Friday?

A. On Friday. And in the mean time had, without any notice to anybody gone before Judge Utz and gotten the order directing me to come here and enjoining the different officials and so forth.

By Mr. Fairleigh:

Q. That was the point?

A. At the time, I insisted with Mr. Butler that I had said to him over the telephone that I would go before Judge Utz for the order. Mr. Butler said I had said nothing of that kind over the telephone to him, and it was a question of veracity between us and the Judge announced that he would believe Mr. Butler.

Q. Proceed.

A. At two o'clock on Tuesday—Mr. Jewett addressed the court as we were approaching noon on Tuesday, and then at two o'clock on Tuesday Mr. Jewett again addressed the court and after being questioned to some extent by Judge Anderson said that he would, as vice president of the New Albany Trust Co. turn over the property. Thereupon I took the floor and said to the court in effect, I wont undertake to repeat exactly my words, that I felt very keenly the charge

of discourtesy, and I proposed to eliminate from this case any evidence of any such thing and that I would ask leave of the court to withdraw the copy of the petition which had been filed in the Floyd Circuit Court on that Saturday morning, the copy of the order thereon and the pleading which I had filed before this court. The court gave me that leave and I withdrew those papers. I further said I did not think Judge Utz would be willing to rest under a charge of discourtesy and I would move him for an order expunging the order of the Floyd Circuit Court covering the matters that had taken place as I have illustrated on Saturday.

Q. What was the result of the argument here? Was there any suggestion made by this court about giving up the property or to you as attorney for the Trust Company about your advice and what was said?

A. Mr. Jewett was finally asked by the court whether he as the vice-president of the New Albany Trust Co. would deliver up that property. Mr. Jewett finally said that he would. He did wish to go before Judge Utz, but he finally said he would deliver the property irrespective of what Judge Utz said about it. I was then asked whether I would advise the giving up of the property and I said I would. I was asked in my capacity as attorney for the New Albany Trust Co., as receiver, and I said I would so advise.

Q. When did you return to New Albany?

A. We all went back home on Tuesday afternoon, the 17th, arriving about eight o'clock at night.

Q. When you got back to Louisville, what did you do in respect to these matters?

A. On the way to Louisville I had said to Mr. Jewett that I felt very much humiliated over what had occurred and I was going to ask Mr. Sachs to go over with me to explain the situation to Judge Utz and as far as possible try to square me with Judge Utz. That was the effect of it. I told him I felt it ought to be done and I wanted to be square. I wanted Judge Utz's good opinion, and other words to that effect. Next day on Wednesday, I asked Mr. Sachs to go with me and Mr. Sachs consented for the purpose of explaining the situation to Judge Utz as far as might be. And of saving me if necessary from Judge Utz's wrath, as far as he might be able to do it. The closer I got to New Albany the more did I question whether I had done the right thing by agreeing to advise the turning over of the property. That was the situation as I tell it to you and I went over to New Albany and arrived there at about three-thirty in the afternoon.

By Mr. Miller:

Q. Wednesday?

A. Wednesday. And we went before Judge Utz and I introduced Mr. Sachs to Judge Utz and Judge Utz to Mr. Sachs and I explained to Judge Utz what had occured here; what Mr. Jewett had agreed to do and what I had agreed to do. The result of that conference was that Judge Utz was very much exercised about the matter and finally said he wanted a conference with the lawyers in the case and asked us to go by and notify several of the counsel. Mr. Sachs and I went over to Mr. Jewett's office, we did not know where Mr. Kelso's office was, or where Mr. Stotsenberg's office was, or any of the other offices, except perhaps Mr. Hester's. And Mr. Jewett called up Mr. Kelso's office.

Q. Did you go from Judge Utz to Mr. Jewett's office?

A. Yes sir. And I told Mr. Jewett that Judge Utz wanted a conference. On Mr. Jewett's telephone message to Mr. Kelso, Mr. Sachs and I went over to Mr. Kelso's office. It was quite late by that time and we asked Mr. Kelso to notify the other counsel saying that Judge Utz wanted to see them.

Q. When?

A. Nine o'clock next morning. Mr. Kelso said I have just had a telephone message from Judge Utz in which he wants to see me for an interview at eight o'clock in the and thereupon he questioned me as to what had taken place at Indianapolis and I told him.

By the Court:

Q. Who questioned you?

A. Mr. Kelso and I explained the situation as it occured here and just as it occurred here. He wanted to know what I proposed to do with the property and I told him I proposed to give it up as far as I could. That the court had my promise, I won't say promise, my statement here. Mr. Kelso made some remarks about that matter and intimated that I ought not to have done it, that I ought not to have given it up. And with that we left.

By Mr. Fairleigh:

Q. Was there anything there said about the appointment of a new receiver?

A. Not at all.

Q. Was it suggested between you in any way?

A. Not at all.

Q. Who was with you?

A. Mr. Sachs.

Q. Anybody else?

A. No sir.

Q. Was there anything said about the New Albany Trust Co. resigning as receiver?

A. Not at all, on the contrary nothing of that kind was said. Mr. Kelso did tell us how he refused to sit down before

one of the Federal Judges, matters of that kind which had nothing to do with the case, as an illustration of why I should not have done as I did up here.

Q. You say there was nothing said about the appointment of a receiver, or the removal of the New Albany Trust Co. was there anything said about anybody paying the costs of any receivership?

A. No sir.

Q. Was there anything at all said about that?

A. Not at all.

Q. Can you think of anything upon which any misapprehension could have arisen—was there anything said at all about it?

A. Do you mean at that conference?

Q. At that particular time.

A. No sir, I cannot. Mr. Kelso knew I was arranging for preparations for the defense in the main bankruptcy proceedings.

Q. How did he know that?

A. Because I told him so.

By the Court:

Q. I do not understand what you mean by "defense in the main bankruptcy proceedings."

A. I mean that under section 18 of the bankruptcy act, as creditors, Ryerson & Son proposed to file an answer and defend against the original petition in bankruptcy in this court.

By Mr. Fairleigh:

Q. Did you go home after that?

A. Yes sir, we went home.

Q. Was anything said about notifying Mr. Stotsenberg—did Mr. Kelso say anything about notifying Mr. Stotsenberg?

A. Yes sir, I asked him to notify Mr. Stotsenberg, and he said they were not on good terms.

My recollection is he said he did not speak to Stotsenberg.

By the court:

Q. You mean that you were for Ryerson and Son to contest the allegations of preference in the bankruptcy proceedings?

A. Yes sir. I do not know, Your Honor please, that it was to be a contest of elections and preferences as much as it was either on the basis of election of remedies or estoppel as given in several opinions, which I have presented to your Honor.

By Mr. Fairleigh:

Q. Go on and relate the story after that. How long did you stay at Mr. Kelso's office?

A. Not a great while.

Q. You can not be accurate, but about how long?

A. Perhaps a half an hour or may be not a full half hour. Just a little while.

Q. What time did you return to Louisville that afternoon?

A. I think we got home in the neighborhood of six o'clock.

Q. Did you go immediately from Mr. Kelso's office to Louisville?

A. Yes sir.

Q. Did you stop anywhere on the way?

A. No sir; it takes about forty five minutes to get over on that road.

Q. What did you do next day?

A. The next day we went back over there, Mr. Sachs and I.

Q. That would be Thursday the 19th?

A. Yes sir. On Wednesday night I prepared a paper a copy of which is found in the record, in which I reported for the New Albany Trust Company that we had appeared before this court in obedience to that court's order and that there was no change in the order and that the order remained then as it was and I moved for leave to withdraw or expunge that part of the record in that cause which was made up on that Saturday.

Q. The 24th?

A. No on the 14th of February. That is, I sought to withdraw the petition I filed on that day and the order entered thereupon and have them expunged.

Q. Did you have a paper prepared when you went before Judge Utz; the evening before or a memorandum on yellow paper?

A. No sir, I prepared that on Wednesday night at my rooms in the hotel and filed it on Thursday morning before Judge Utz.

The court thereupon took a recess for lunch.

WEDNESDAY, MARCH 11, 1903.

AFTERNOON SESSION.

The Court met at two o'clock pursuant to adjournment.

The direct examination of the witness William W. Watts was resumed as follows:

Questions by Mr. Fairleigh:

Q. Mr. Watts just before the noon adjournment you stated to the Court that you had prepared in your room at the Willard Hotel in Louisville a petition to be filed—a petition or statement to be filed in the Floyd Circuit Court the following

morning, namely, Thursday morning. Did you go to New Albany Thursday morning?

A. Yes sir.

Q. Did you go to the Floyd Circuit Court?

A. I did.

Q. Did you go directly to the Court in the train or cars on which you went?

A. Yes sir, I went directly to the court house.

Q. Did you find Judge Utz in his chambers at the court house?

A. Yes sir.

Q. Was anyone else there when you got in?

A. On Thursday morning?

Q. Yes.

A. Yes sir, Mr. Kelso was there.

Q. Who accompanied you to Louisville, or New Albany, if anybody?

A. Mr. David Sachs.

Q. Well now tell the court what happened before Judge Utz that morning in his chambers at the court house?

The Court: Excuse me, was that the Thursday after they had been here to Indianapolis?

Mr. Fairleigh: Yes, sir.

The Court: The 19th?

Mr. Fairleigh: Yes.

A. You refer, Mr. Fairleigh, to Thursday, the 19th of February?

Q. Yes.

A. My recollection is that we got there in the neighborhood of ten o'clock in the morning. Judge Utz and Mr. Kelso were there.

Q. Did you file the petition before Judge Utz which you had prepared?

A. Yes sir, I filed that statement, prefacing its filing by a reiteration of what I had said the day before as to what had occurred at Indianapolis, explaining to Judge Utz why the order remained—the order of this court remained unchanged, and why I sought to expunge so much of the record as referred to our coming here to Indianapolis. It wasn't a great while after we were there, I think, that Harry Jewett came in, Henry Jewett.

Q. Was that statement signed by you as the attorney for the New Albany Trust Company?

A. It was.

Q. Do you know whether any other or separate paper was filed by the New Albany Trust Company that was not signed by you?

A. Yes, the New Albany Trust Company filed a report showing substantially the facts as they occurred here, and

what it had said it would do and what it proposed to do and as I remember it asked leave that it might do it.

Q. What action was taken by Judge Utz upon the presentation to him of these statements or petitions?

A. Judge Utz declined to grant the prayer of either petition, but being still very much in anger about the matter indicated that we were both of us guilty of contempt, and I think it was upon that day—

By Mr. Miller:

Q. (Interrupting) guilty of a contempt of his court?

A. Of his court. I think it was upon that day that he entered such orders as required us to appear and show cause why we should not be punished for contempt.

By Mr. Fairleigh:

Q. How long were you before Judge Utz that morning?

A. Well we got there about ten o'clock. I think we were back in Louisville at about half past twelve. We were before Judge Utz in the neighborhood of an hour and a half possibly.

Q. Did you go anywhere else about New Albany after you left Judge Utz's chambers?

A. Not unless I may have gone to Mr. Jewett's office.

Q. Did you take luncheon at New Albany that day?

A. No sir, I took lunch at Louisville; I lunched at the Willard Hotel at Louisville with my family.

Q. Did Mr. Sachs return to Louisville with you?

A. Yes sir.

Q. Was there any other or further discussion, as you now remember before Judge Utz that morning with reference to the appointment of a new receiver and the removal of the New Albany Trust Company as receiver? Did you hear anything of this? If so, tell the court what you heard?

A. That was on Thursday morning?

Q. Yes sir.

A. I don't recall that I did. Judge Utz was as I say very much exercised about what had occurred, and said that he didn't propose to give up the property,—words to that effect; and I really was exercised about my own position, and I don't recall that anything was said at that time.

Q. Do you remember whether Mr. Charles Jewett came into that court that morning?

A. Yes, Colonel Jewett came in; if I am not mistaken I think Mr. Harry Jewett preceded him, and then Colonel Jewett appeared. Colonel Jewett took the position that Mr. Harry Jewett as the vice-president of the New Albany Trust Company as receiver had agreed or stated while he was at Indianapolis to his Honor Judge Anderson that he would turn over the property to Mr. Connor as receiver, and that

that was the agreement; that no matter how embarrassing it might be to the trust company, the trust company was going to carry it out. I coincided with Colonel Jewett's views, and said that I had agreed—that was when the matter was being formally presented—that I had agreed to advise the trust company to turn the property over, and that I did so advise it notwithstanding what might happen.

Q. Did Mr. D. A. Sachs go to Mr. Jewett's office with you, do you remember, after you quit Judge Utz's office?

A. I am not certain that we went to Mr. Jewett's office on that morning; I was at his office quite a number of times during the week, but whether that day or not I don't know; I know we got home early, perhaps half past twelve afternoon.

Q. Where were you during the Thursday afternoon after you went to Louisville?

A. After taking my lunch at the hotel I went to my office and all of a sudden a great weakness came over me, my legs went from under me, and I went to my hotel and went to bed. I was in bed Thursday afternoon from about three o'clock until the next day.

Q. During the time or about the time that Col. Jewett was addressing the court on Thursday do you remember whether any inquiry was made of him by anybody as to whether the property had been actually delivered by the New Albany Trust Company to Conner, receiver?

A. Well such an inquiry might have been made. I don't know that it was, or was not.

Q. Do you know whether you had any actual knowledge on that Thursday before you left New Albany or after you left New Albany that the property had been actually turned over to Connor, receiver, by the New Albany Trust Company?

A. Yes sir, I remember Mr. Hester — not Mr. Hester, strike that out please—Mr. Kelso telephoning to Mr. Sauer who was secretary asking whether or not the property had been turned over.

Q. Where was Mr. Kelso when he was telephoning?

A. He was seated in the Judge's chambers there.

Q. What did you do Friday morning? Did you go to New Albany Friday morning?

A. Thursday afternoon I was in bed. Mr. Sachs reported to me that Mr. Kelso had called him up and said that he and Judge Utz wanted to see us.

Q. When?

A. Friday morning.

Q. Well what did you do Friday morning?

A. We went over there Friday morning.

Q. What time did you arrive at New Albany?

A. I should say about ten o'clock.

Q. Where did you go ?

A. We went to Judge Utz's office.

Q. Who did you find there ?

A. Judge Utz.

Q. Anyone else ?

A. Mr. Kelso.

Q. Anyone else ?

A. I think not.

Q. What was said when you went in ? What was said between you whilst you were there if you now remember ? What was done ?

A. It is right difficult to keep these things chronologically in your mind. Friday was the day—well we got there about ten o'clock; we went in to see Judge Utz; we were there for a few minutes when, as I remember it, as to myself, I believe it was on that day that I got the first knowledge of being ruled or cited; but at all events after sitting there a few moments—

Q. (Interrupting.) Ruled or cited to appear in what court?

A. Before Judge Utz. After sitting there a few moments I went out for the purpose of doing some further things with respect to the defense in the bankruptcy proceedings in this court. Before I left Indianapolis on the 17th inst. I had ordered from Mr. Butler, the clerk, a full copy of the record.

Q. The 17th of February ?

A. The 17th of February—A full copy of the record, and that record hadn't been sent down to me yet; and I was looking out for that and looking out for the—on the question of what defense would be made, when we should plead and various of such matters.

Q. Where did you go to look into that ?

A. In that connection I went to the office of Mr. Cardwill the deputy clerk of this court, and to Mr. Jewett's office.

Q. Did you go anywhere else during that day, if you remember, whilst you were in New Albany ?

A. Oh yes, I went to a great many places; I went back and forth; I went to Mr. Cardwill's office two or three times trying to get in there, and was in Jewett's office two or three times.

Q. Did you do back to Judge Utz's chambers?

A. I went back to Judge Utz's chambers at three o'clock in the afternoon, as I remember it.

Q. Did you take lunch at New Albany on that day ?

A. Yes sir.

Q. With whom ?

A. I lunched with Mr. Sachs and with Mr. Kelso.

Q. Had you been in Mr. Kelso's office that morning?

A. I don't think I had been. When we separated it was a question of where lunch would be gotten and it was agreed that lunch should be gotten at Mr. Goodbug's.

Q. Where did you separate, Mr. Watts, from Mr Sachs?

A. It seems to me that we separated in Judge Utz's office.

Q. So that Mr. Sachs and Mr. Kelso came to Mr. Goodbug's where you were taking lunch?

A. Yes sir.

Q. And you lunched together?

A. Yes sir.

Q. Thence where did you go?

A. Thence we went back to the court house.

Q. Altogether?

A. Altogether, except that I didn't go into the court house. I went on, then, to Mr. Cardwill's office. Mr. Cardwill hadn't yet gotten back from lunch, and I went to Mr. Jewett's office, and then subsequently went back to Mr. Cardwill's office again, and then from Cardwill's office I went to the New Albany Trust Company. The New Albany Trust Company and I as attorney for Ryerson & Son had been notified to be present before Judge Utz at three o'clock that afternoon.

Q. For what purpose?

A. On the action of the court with respect to the report—No, on the action of the court with respect to the pleading that we filed concerning the action of the New Albany Trust Company in this matter.

Q. When, if at all, that day did you first learn anything about the New Albany Trust Company being removed or being about to be removed, if you knew it in advance, and another person being appointed in its stead as receiver by Judge Utz? When did you get any information about that at all?

A. Well, definite information of it came from the action of Judge Utz at that time, as I remember, at three o'clock.

Q. Well, what did you do after you returned to Judge Utz's chambers? What did you do or say?

A. Well I did nothing; I took a back seat in the matter; Mr—I think Colonel Jewett was there with the president of his company, and it may have been Mr. Harry Jewett, I don't remember which, one or the other was there, and Judge Utz very probably announced that he was going to remove the New Albany Trust Company, and directed Mr. Kelso to make up the papers, make up the orders. The question of what his bond should be was raised; Mr. Kelso took the position that the bond ought to be small; Judge Utz took the position that the bond ought to be $30,000,

and at that meeting there was present, as I remember it, Mr. Kelso, one of the clerks, Mr. Joe Sachs, Mr. Dave Sachs and myself. I don't know whether the Jewetts were there at the time of the arrangement about the bond. Or, I know now, it was Mr. Harry Jewett; Mr. Harry Jewett went with me from the trust company at three o'clock in the afternoon to go to Judge Utz, and as I recollect it he didn't stay very long. The bond was arranged for, and Judge Utz instructed Mr. Kelso to prepare the necessary and proper orders

Q. Were the orders prepared there as you remember? How long did you stay?

A. Oh I don't know anything about where the orders were prepared or anything about that. I know Judge Utz had his mind made up as to what he was going to do and did it very promptly. We were not there over fifteen or twenty minutes I should say.

Q. What participation, if any did you have in the action respecting the removal of the trust company and the appointment of another receiver?

A. I had none.

Q. Nothing whatever?

A. None whatever; on the contrary, I was at all times adhering to the proposition of trying to efface the terrible charge of discourtesy that had been made against me and trying to get the property turned over to Mr. Connor, receiver.

Q. Did you do anything there or advise anything there against that original intention of turning over that property?

A. No; on the contrary I always said it should be done.

Q. Did you do anything there or advise anything there, or abet the doing of anything looking to the retaking of that property by Kelso, receiver.

A. No sir I did not.

Q. Who left with you when you left Judge Utz's chambers that afternoon, that Friday afternoon?

A. Mr. Joe Sachs, Mr. D. A. Sachs' brother—

Q. (Interrupting) What was the occasion of leaving?

A. (Continuing previous answer) Was there to see about what was known as the Walters contract; he and Mr. Hester represented Walters and Walters was to get certain boilers installed and so forth, and at the so-called creditors' meeting an order had been entered directing the receiver what to do about that; and Mr. Joe Sachs was very much disturbed about whether he was going to get his boilers, now that the question of the clash of jurisdiction had arisen; and he was there to see Judge Utz about it; and he extended an invitation to Judge Utz to go the cafe; extended that invitation to me and I accepted it.

Q. Was it extended to anybody else?

A. It was extended to everybody. Yes sir.

Q. Who accepted it?

A. Judge Utz and I only.

Q. Well did you and Judge Utz and Mr. Joe Sachs go out together to the cafe?

A. I think we did. I am very sure we did.

Q. Whom did you leave in the room, if anybody?

A. My recollection is we left Mr. David Sachs in the room, possibly Mr. Kelso; but Judge Utz had instructed Mr. Kelso to go and prepare the papers in the meantime.

Q. That is to say from the judge's chambers you left?

A. Yes sir.

Q. Do you know whether Mr. Kelso had gone out ahead of you, or did you leave him there, or did he go out with you?

A. It seems to me now that Mr. Kelso went with us, and got a cigar, and then left us and went on to his office.

Q. Is that a positive recollection?

A. Well I can't say that it is positive, no: I think that is the fact.

Q. Where was Mr. David Sachs?

A. Mr. Sachs wasn't feeling very well, and we left him at the office.

Q. You left him in the office of Judge Utz.

A. Judge Utz's office. Yes sir.

Q. Did Mr. Sachs make any exceuse for not going with you to the cafe?

A. Mr. Sachs declined the invitation to take a drink. That was rather a novel proposition.

Q. What reason did he give for it, if any?

A. He wasn't feeling very well.

Q. Well you did go to the cafe?

A. Yes sir.

Q. You, Judge Utz and Mr. Joe Sachs?

A. And Mr. Joe Sachs. Yes sir.

Q. How far away from the court room was that?

A. That was a half block one way and a half block another; a block in all.

Q. About what time in the afternoon was this, Mr. Watts? Give your best recollection about that?

A. It was about half past three, thereabout.

Q. How long did you stay at the cafe?

A. All afternoon.

Q. Did any of these three, Judge Utz or Mr. Joe Sachs leave during this time, during this time you all stayed there, or during the time you stayed there?

A. Judge Utz left after we had been in there some considerable time.

Q. Who remained with you?

A. Mr. Joe Sachs and I.

Q. What time did you arise from that sitting?

A. We arose from that sitting at about half past five or a quarter to six.

Q. Where did you go?

A. We went outside and started up the street toward what I believe is Spring street; we fell in with Mr. Zier, Michael Zier.

Q. Where did you see him?

A. Right there in that neighborhood; right, I think, at the trust company, or next to the trust company building.

Q. Was it just a casual meeting?

A. Just a casual meeting; Mr. Sachs was talking about his boilers.

Q. Which Mr. Sachs?

A. Mr. Joe Sachs.

Q. Talking to Mr. Zier about it?

A. Talking to Mr. Zier about whether or not he was going to get his boilers, and how he was going to get them, and what his people were going to do in the meantime if they didn't get them; and whether or not some arrangement couldn't be made if this conflict was going to keep up whether some other arrangement could be made for completing the boilers.

Q. What was your purpose? Where did you intend to go when you left the cafe? Where were you going?

A. Well we were going to Spring Street for the purpose of catching a car Mr. Joe Sachs wanted to find his brother Dave, and he went to the court house to find him.

Q. Well did he find him?

A. No, Mr. Joe Sachs after leaving me at the corner, talking with Mr. Zier, went to the court house and came running down; he had been sick; he was sick that afternoon and the next thing I saw of him was that he was running to catch a car that was at that moment and ready to start.

Q. Did he pass you and Mr. Zier?

A. He passed us.

Q. What did he say?

Q. He sang out that he had been able to see Dave and he was going home; that was at six o'clock; it was what was known as the six o'clock car.

Q. When thereafter did you see Mr. David Sachs?

A. Immediately thereafter Mr. David Sachs came along.

Q. Was he alone?

A. I think he was; he was alone; Mr. Kelso immediately followed and I was still talking to Zier; I wanted to know of Zier what Zier was going to do with respect to the

bankruptcy proceedings, and I was talking to him on those lines, and upon Mr. Sachs and Mr. Kelso coming up I left Zier and went with them.

Q. Well the car had passed; the six o clock car had passed.

A. Yes sir.

Q. How long was it then before another car would come?

A. Well it wasn't very long.

Q. How many minutes, if you know?

A. Oh I should say not exceeding five.

Q. Well you and Mr. David Sachs and Mr. Kelso then walked along together?

A. Oh we went across the street and Mr. Sachs and I caught the car.

Q. How far did you walk with Mr. Kelso?

A. We didn't walk with him at all, except across the street?

Q. What did Mr. Kelso say to you after he came up about these business transactions, if anything?

A. I don't think Mr. Kelso said anything at all.

Q. What did you say, if anything?

H. I don't think I said anything. We were not together but the time for crossing the street.

Q. What did Mr. David A. Sachs say, if anything?

A. I don't remember what Mr. Sachs said except that he and I, whenever we got an opportunity, discussed the question of my contempt before Judge Utz, the charge of contempt before Judge Utz, and as to just what happened there or what was discussed, my mind was very much clouded; I don't know what was discussed.

Q. Did Mr. Kelso say to you where he was going?

A. Not that I recall.

Q. Did you know where he was going?

A. I did not.

Q. Thereupon you and Mr. David A. Sachs took the car to Louisville?

A. Yes sir.

Q. That was Friday evening, the 20th?

A. That was Friday evening, the 20th of February.

Q. Well, now, going back to that Friday sitting before Judge Utz, did Mr. Kelso or anybody else, say anything to you or to Mr. David Sachs in your presence about you or him paying the costs?

A. No sir.

Q. Of any proceeding whatever?

A. No sir; none at all.

Q. Was that ever mentioned at any time until in the meeting in Louisville on Monday or Tuesday?

A. Not at all; and if I may make an explanation, it could not have been mentioned so far as I was concerned, for

this reason: I not only had stated to Judge Anderson that I would advise the turning over of the property to Mr. Connor, not only had I filed a report and petition showing substantially the facts to Judge Utz, I had stated to him orally, but Mr. Jackson who was here on the day of the 16th and 17th of February—

Q. (Interrupting) Here in Indianapolis, you mean.

A. Yes sir; as the representative of my client, Ryerson & Son, whose claim was $15,000 and the only one of material moment that I was representing, had said to me "It must be a receiver anyway; go in there and make that assent.

By the Court:

Q. Go in and make what?

A. Go in before you and do what I did do in the afternoon of the 17th inst.

By Mr. Fairleigh:

Q. So that was with the approval of your client?

A. Oh yes, yes sir.

Q. What time did you get to Louisville on Friday evening the 20th of February?

A. It takes about 45 minutes to go over; we got there at about a quarter of seven or seven o'clock.

Q. What did you do that night? Did you go anywhere that night?

A. Friday night?

Q. Yes.

A. I went to bed.

Q. Was Mr. David A. Sachs with you that night after you got to Louisville?

A. Oh no, no sir.

Q. Now on Saturday as I understand you you had been ruled by Judge Utz to appear before him at three o'clock P. M.; did you make any appearance before him on Saturday?

A. We asked Judge Utz to extend the time.

Q. Did you make any appearance before him on that day?

A. Oh yes, we were there before him.

Q. At what time did you arrive in New Albany?

A. I am not certain about that but I think it was just before lunch time.

Q. Did you take lunch in New Albany?

A. Yes sir.

Q. With whom?

A. Mr. Sachs and I lunched together.

Q. Mr. David A. Sachs?

A. Yes sir.

Q. Anybody else?

A. No sir.

Q. Where did you go from the lunch room?

A. I think we went from the train to the lunch roon.

Q. Where did you go from the lunch room?

A. My impression is that we went to the court house.

Q. Directly?

A. Yes sir?

Q. Was Judge Utz there?

A. Yes sir.

Q. Anybody else?

A. Mr. Kelso may have been there. I don't know whether he was or not.

Q. What proceedings were taken before Judge Utz then?

A. The only proceeding was that Judge Utz very kindly said that the rule as to the New Albany Trust Company had been respited until Wednesday, and mine might go too.

Q. So the rule was respited until Wednesday following?

A. Yes sir.

Q. How long were you before Judge Utz then?

A. Well we were not very long before him until there was another adjournment to the cafe.

Q. Who went with you?

A. Judge Utz, Mr. Kelso, I think Mr. Sachs; and later in the afternoon—

Q. (Interrupting) David A. Sachs?

A. Yes sir; and later in the afternoon Colonel Jewett came in?

Q. Now this was Saturday afternoon?

A. Yes sir.

Q. How long did you stay there?

A. Well we stayed there till dark?

Q. Did you all remain there until dark, all those you have named?

A. Well no, Colonel Jewett was only there for a little while. I think he came in and he and Judge Utz went out together.

Q. Mr. Kelso, when did he leave?

A. I don't remember how long Mr. Kelso stayed, but he stayed for awhile. He was smoking only. He wasn't drinking anything.

Q. Were you and Mr. David A. Sachs after awhile left alone in the cafe?

A. Yes sir; yes sir, and we finally went home together.

Q. From the cafe?

A. Yes sir.

Q. Are you certain, Mr. Watts that you were in the cafe twice, spent two afternoons in the cafe at New Albany?

A. I am positive about it, sir.

Q. Well what time did you get to Louisville that evening, Saturday evening?

A. Some time between five and six o'clock I would say. A good many of these matters that didn't impress themselves upon my mind in any way, but I should say between five and six o'clock sometime.

Q. On that day, Saturday, to-wit, what was said between you and Mr. Kelso or Judge Utz in regard to this receivership, if you remember? Was there any talk about it specially.

A. I don't remember that there was any particular talk at that time. There were quite a number of times when on that day I suppose, and at different other days, different times, when Judge Utz and Mr. Kelso were anxious to know from me what had taken place at Indianapolis, what were the facts, what I had agreed to do, what was the order that was entered, if any, and everything relating to these matters. There were quite a number of hypothetical questions stated, propositions stated, wherein I was asked to state what I thought about that with respect to the bankruptcy law and I gave them my idea; whether there was anything said on Saturday or not, except in a general way, I should say no. I might say this further; as I recollect it I spent a good deal of the time on Saturday in discussing with both Colonel Jewett and Harry Jewett finally the question of what should be done for Zier & Company and Ryerson & Son, Zier & Company being a defendant and Ryerson & Son as a creditor proposing to come in and become a defendant, what should be done for them in the original bankruptcy proceedings, and what pleadings should be filed, and how they should be prepared, and who should prepare them; further there was divers questions that were discussed which required my presence over there as I saw it; one for instance was when was the time to answer.

Q. Answer where?

A. In that bankruptcy proceeding; the question in my mind as to whether the clerk had exceeded his power in fixing the return day and whether we had a right to rely on that or whether we should answer, and how we should plead, whether by plea, answer or demurrer; all these questions were discussed by Colonel Jewett and Mr. Harry Jewett and myself during these several days.

By the Court:

Q. You never filed any kind of a plea, did you?

A. No sir I did not; I intended to do it at that time.

By Mr. Fairleigh:

Q. Well why didn't you file it?

A. I only knew from what my brother reported to me, to-wit, that Ryerson & Son instructed us not to defend since all of this occurred.

By the Court:

Q. Well Ryerson & Son had already told you here in Indianapolis to consent to the turning over of the property to this court and its administration here, and you so testified, didn't you?

A. Your Honor—

Q. (Interrupting) You so testified, didn't you?

A. Only as to the turning over of the property.

Q. Ryerson, I understood you to stay, that Ryerson's agent here at Indianapolis told you to consent to the turning of the property over to this court?

A. Yes sir, but at the same time instructed me to prepare a defense to the bankruptcy proceedings; the original instruction was only for the purpose of consenting to the turning over of the property, but they also instructed me to proceed to the defense of the bankruptcy proceeding.

Q. One of the causes of bankruptcy alleged was the preference made to Ryerson & Son?

A. Yes, but whether that was a preference was a matter of opinion.

Q. I say that was one of the causes alleged, was it not?

A. Yes that is true.

By Mr. Fairleigh:

Q. When did you, if at all, again receive any communication from the parties at New Albany after you returned to Louisville on Saturday night?

A. Somebody telephoned me that night at about half past ten or eleven o'clock; I suppose it was from New Albany.

Q. Where were you?

A. I was in my room at the hotel asleep; I was waked up; the telephone in my room rang, and I answered it; Some body said that we had been all of us cited to appear in this court for contempt.

Q. What did they desire you to do, the person who advised you over the phone?

A. It was a question whether I should come over there then or come over in the morning; I finally said there was no occasion for me to come over except on Sunday, and I finally went over on Sunday.

Q. Do you know who telephoned you?

A. No, I couldn't say.

Q. So you did go over on Sunday morning?

A. Yes sir.

Q. That was the 21st day of February or the 22d day of February?

A. That was the next day in order.

Mr. Miller: The 22d.

Q. Where did you go that morning, Sunday the 22d of February?

A. Sunday was the 22d. Either Mr. Sachs called me up or I called him up, and we agreed to go over and we went over to New Albany along about ten or half past ten, and we went to Judge Utz's—to the court house; it was quite cold, and just as we got to the door Judge Utz and Mr. Kelso came out of the court house; Mr. Kelso said that there was no fire there and he would make a fire in his office if we would go with him and invited us over, and we went.

Q. Did they have a copy of the rule which had been issued by the United States district court?

A. Yes sir, that was the main purpose of our going over there to see in what manner we were involved in the citation.

Q. You say the main purpose, was there any other purpose?

A. No, no other purpose; that was the purpose of going.

Q. Well what did you do there that day at Mr. Kelso's office?

A. We generally discussed the question of responses; Mr. Kelso said he wasn't familiar with the practice in the court, and asked divers questions as to how the response ought to be made and matters of that character; I think there was nothing else discussed than the general proposition of how the responses ought to be made; What response ought to be made.

Q. What time did the meeting adjourn?

A. The meeting adjourned a little before twelve o'clock.

Q. Where did you and Mr. Sachs go?

A. We went home.

Q. Arriving at Louisville about what time?

A. About, my recollection is about one o'clock. Yes I know it was about one o'clock. I took dinner at the hotel on that day.

Q. Did you after that have any meeting with Judge Utz or Mr. Kelso or either of them? I don't mean on that day, but at any time?

A. On the following day, Monday.

Q. How was that meeting brought about?

A. We received two telephone messages from Mr. Sachs asking us to come over to his office.

Q. Who received them?

A. I received the message. My brother and I were then discussing the question of these rules, the rules from this court.

Q. What time of day was that on Monday as near as you can remember?

A. What do you mean?

Q. What time of day was it when Mr. Sachs telephoned you or your brother to come over to his office?

A. He telephoned about nine o'clock, I believe, or half past nine; I said I couldn't come; then; he then telephoned about eleven o'clock, or half past and said that Mr. Kelso had come and brought with him a copy of the order.

Q. On Sunday was there any arrangement made between you and Mr. Sachs and Mr. Kelso and Judge Utz for a meeting on Monday?

A. Yes, Mr. Kelso wanted to come over, and the arrangement was that he should come over on Monday.

Q. And accordingly he did come over?

A. And accordingly he did come over.

Q. What time did you get to Sachs' office, if you remember?

A. I got to Mr. Sachs' office with my brother John at somewhere between eleven and eleven-twenty.

Q. Who was in Mr. Sachs' office when you got there?

A. Mr. Kelso was there, Mr. Maurice Sachs, Mr. David Sachs, my brother John and myself.

Q. Well tell the court what was done and said there at that meeting?

A. The first thing that was done was that Mr. Sachs had a paper which he said purported to be an order of this court, made on the 17th day of February—

Q. (Interrupting) Was that the first time you had—

A. (Interrupting) He asked me if I knew anything of that order. I told him that I did not. Asked me what my idea was about the order, as I had been asked a half a dozen times before by Judge Utz and Mr. Kelso, and I told him just as I had said before that I had no idea that any order was going to be entered. That order purported—I don't remember all the terms,—But purported to show that Mr. Jewett and I had appeared here voluntarily in this court—well the order will speak for itself.

Q. Yes, the order speaks for itself. That is the order of the United States district court in the bankruptcy proceeding entered on the 17th day of February that you refer to?

A. Yes sir.

Q. That order was there or a copy?

A. What purported to be a copy.

Q. It was a copy I suppose?

A. I suppose it was. I don't doubt that.

Q. Well?

A. Well I told him I didn't know of any such order, and Mr. Sachs took the position with Mr. Kelso that that order

effectively settled this question so far as the taking of the property was concerned.

Q. Was there anything else talked about except the response that was to be made by Mr. Kelso to this rule in the District Court?

A. There was some talk about the response, and how the response ought to be made; and either Mr. Sachs said that Mr. Kelso ought to get him a lawyer, or Mr. Kelso said he was going to get one; and about that time my brother John, in the presence of Mr. David Sachs, Mr. Maurice Sachs, Mr. Kelso and myself said to Mr. Kelso, in effect these words: I will quote them as nearly as I can: "Mr. Kelso, did my brother, W. W. say anything or do anything or in any way indicate that he would have this property kept in the State court, and away from the Federal Court at any time since his appearance at Indianapolis?" Mr. Kelso said: "He did not." The same question was put to Mr. Sachs, Mr. David A. Sachs.

Q. With reference to David A. Sachs, to him?

A. No no, as to me. The same question was put to Mr. David A. Sachs, and Mr. Sachs said "No," just as Mr. Kelso had done. My brother then said, "Gentlemen, I will then ask you for your affidavits so that those affidavits may be filed with my brother, W. W.'s response." Mr. Kelso and Mr. Sachs both agreed to make their affidavits to that effect. Thereupon my brother said: "Then I think, gentlemen, it is time for my brother, W. W. to withdraw from this conference." Thereupon the question was submitted to Mr. Maurice Sachs as to whether there was any impropriety in my being there at that conference, and Mr. Maurice Sachs said no, we are only considering the responses, and inasmuch as it was a matter of very grave importance we stayed.

Q. Was there anything said by anybody at that time about the payment of costs and expenses?

A. That was in the morning. No, there was not.

Q. Well what was said in the morning; or at any time?

A. About that? I said what I have just related to the court in the morning; now nothing was said at that time about costs or expenses.

Q. Well how long did this meeting continue?

A. While we were there some one came in from the front part of Mr. Sachs' office saying that Judge Utz had telephoned that he wanted to come over; the question was should Judge Utz come over, and some one present said: "Yes, tell him to come over," and Mr. Dave Sachs went to the telephone himself and came back and reported that Judge Utz would be there at two o'clock I think it was; whereupon I told Mr. Kelso and Mr. Sachs and the others

there that I had an engagement with Colonel Jewett,—or rather I had an engagement with reference to Colonel Jewett appearing here for me, and that that engagement was to be kept by me at half past one o'clock. At half past one o'clock Mr. Harry Jewett came to my office as the representative of his brother Charle, and said to me that under all the circumstances of the case he thought it would be wiser for me to get other counsel.

Q. I suppose that is immaterial;but did you go back in the afternoon to Mr. Sachs' office?

A. In the afternoon I again went back; we were called at about three o'clock, I should say, by telephone.

Q. When you say "we" who were they?

A. My brother and I.

Q. Your brother John?

A. My brother John, and we both went back to Mr. Sachs' office, and Judge Utz in the meantime had come in.

Q. He was there when you got there?

A. He was there when we got there, as was also Mr. Kelso, and Mr. David Sachs, Mr. Maurice Sachs, and Mr. Joe Sachs. One of the first things that was said when I went in was by Mr. David Sachs to the effect, or his words were as nearly as I can remember them, "Mr. Watts, Mr. Kelso thinks you ought to raise the money for the defenses of these rules, or these proceedings." Well I was amazed at any such proposition as that, and I said so, and I asked how I could be expected, upon what basis I could be expected to raise any money; they didn't bring me any business, and I didn't agree to raise any money nor was any money raised by me.

Q. Did you make any agreement to?

A. Not at all.

Q. Was it ever suggested to you before that?

A. No sir.

Q. Had it ever come to you in any other form than that?

A. No sir, not at all. Now it was thereupon that my brother then said to Judge Utz, "Now Judge Utz, I ask you whether my brother had in any way taken part in these proceedings, or bound himself in any way whereby it might be inferred that he was going to endeavor to keep that property from the Federal Court into the State Court; I will ask you now Judge Utz whether any such thing occurred?" Judge Utz said, No, that nothing of the kind had happened; that on the contrary I had always taken the position that I agreed to advise the turning over the property, and in his presence had done so.

Q. Well what else was done at that conference that afternoon? Done or said? Did you talk about anything else than the making of these responses?

A. I think that was the burden of the whole talk.

Q. What time did it adjourn—the meeting break up?

A. I think Mr. Kelso and Judge Utz left about half past four, and left shortly thereafter.

Q. Did Mr. Kelso do anything about employing counsel that evening by telephone or telegraph.?

A. Yes; at least he said so; the question was—Oh yes; Kelso did say that it was going to take three or four thousand dollars to make the defenses in these matters here, and Judge Utz assured him that it wouldn't take any such moneys, but that he had certain moneys in his hands, in the hands of his court which could be used for the expenses of himself as receiver; and Mr. Kelso then said he was going to get himself a lawyer at Indianapolis. Judge Utz wanted to know who; my recollection is that ye said Ferd Winter. They discussed the question of whether or not he was a Republican or Democrat. It was said by Mr. Kelso that Ferd Winter was interested in the Water Works controversy as the repsesentative of Noble Butler, and that he proposed to get Mr. Ferd Winter. Thereupon he left us with a view of going to the telephone, as he had to call up Indianapolis. He came back in about half an hour, Judge Utz waiting in the office in the meantime, saying that he had been,—I don't know, either that he had been unable to get him, or couldn't get him, I don't know what; but that he couldn't get him, and he would have to go to Indianapolis and get other counsel.

Q. Was that the last meeting you had in which Judge Utz and Mr. Kelso took part?

A. Yes that was the last we saw of them.

Q. I will ask you in that connection whether there was anything said about your appearance here in response to that rule? Any discussion about that?

A. Yes there was a good deal said about that; there was a good deal said about my appearance; I had fully expected to appear and make response, I think it was the 25th wasn't it? the 25th; on whatever day that first day was I fully expected and intended to appear. I think it was in the morning of that Monday conference that I asked Mr. Kelso what he would say about my coming to Indianapolis. I had not been served. I let him understand that my desire was to come.

By Mr. Miller:

Q. You say you have not been served?

A. I had not been served. I let him understand that my desire was to come. I thought I had nothing to fear. He said "I wouldn't go"; was very positive about it. Then in the afternoon when Judge Utz came I said to Judge Utz

"Judge, Mr. Kelso thinks I ought not to go to Indianapolis voluntarily; what do you say about my going?" Judge said "I believe I would not go voluntarily." Mr. Kelso spoke up, then, and said this: "In my conversation with Mr. Hester, Mr. Hester told me that Watts was the man that Judge Anderson was after". Well that gave me a very considerable shock, and I said to Judge Utz, I said: "That makes me question whether I ought to voluntarily go or what I ought to do". Judge Utz said: Mr. Watts you ought not to go; I don't think you ought to go". Well I said "I don't know whether I will go or not", and my brother, who was to a very large extent acting for me, said—I believe it was the general concensus of opinion that perhaps I ought not to go, but my brother said: "No, I won't assent to that; I don't think he has got anything to fear, and my idea is that he ought to go". We left that evening with the question of my coming to Indianapolis undetermined and undecided. That night I went home with my brother to his house. The next morning I couldn't use my legs. I was on the verge of nervous prostration, have been ever since and am now, and it was only by staying in bed almost the entire time that I have been able to get here to-day and be in the condition that I am in now.

By Mr. Fairleigh:

Q. Were you served with any citation or process?

A. Well there was an order of arrest sent over there and through the kindness of Mr. Hill it was arranged that I might give bail in the sum of $2,000; the marshal came down to the house where I was in bed, and my brother John and my brother Ben executed the bail for me; I signed the papers and that disposed of that matter.

Q. I wish you would state to this court generally whether in any act or deed of yours, any advice that you ever gave, you in any way undertook to prevent the turning over of the property of M. Zier & Company, from the New Albany Trust Company, receiver, to Connor, receiver?

A. I did not.

Q. Did you ever in any way advise aid or abet the appointment of Kelso, receiver.

A. I did not.

Q. Did you ever in any way advise, aid or abet, in any way, remotely, directly or contingently, the retaking of the property after it had been placed in the hands of Connor, receiver?

A. No sir, I did not.

Questions by Mr. Smith, of counsel for Defendant Sachs:

Q. Mr. Watts, Mr. Sachs had no connection with this case whatever until when?

A. Until I asked him to go to New Albany with me.

Q. What day was that?

A. That was Wednesday the 18th of February.

Q. That was after your return from Indianapolis on the 17th? It was the next day?

A. Yes sir.

Q. To your knowledge did Mr. Sachs ever have any other connection with this case in any way except as your representative o.. the contempt matter before Judge Utz?

A. Not to my knowledge.

Q. You heard the conversation or at least you were with Mr. Sachs at the time on Wednesday afternoon that you went to the office of Mr. Kelso where you said you remained some half hour; was there anything said there by Mr. Sachs in the way of advice in regard to the removal of the Trust Company? or the appointment of Mr. Kelso or any other receiver in its stead?

A. No the conversation of that afternoon as I remember it was largely made up of what Mr. Kelso himself said and my rehearsal of what had occurred here.

Q. Was there anything there upon that afternoon said by any of you in regard to the acceptance by Mr. Kelso of the trust providing you gentlemen or either of you would indemnify as against costs or damages that might result by reason of his acceptance.

A. No sir.

Q. You introduced Mr. Sachs to Mr. Kelso, on that visit?

A. I did.

Q. Who did the talking there, or at least most of the talk-talking, you or Mr. Sachs?

A. Well I should say that I talked a good deal more than Mr. Sachs did, because we explained to Mr. Kelso what was wanted; that Judge Utz wanted to see him, and he then told him, Judge Utz had already told him to meet him at eight o'clock and then it was that Mr. Kelso wanted to know what had occurred up here and I told him and he in turn told us of some things that had happened in his experience in other courts.

Q. Did you have any other purpose in going to Mr. Kelso's office that afternoon, other than to bear to him that message from Judge Utz?

A. None at all.

Q. Did you ever at any time employ Mr. Sachs either directly or indirectly or promise to employ him in any matters connected with this case whatever?

A. Now which part of the case do you mean?

Q. I mean this proceeding here, that is trying to wrest the property or trying to retain the property in the state court?

A. Oh no, not in any wise ; Mr. Sachs went in the nature of my friend and possibly my lawyer if it became necessary on the question of going before Judge Utz in my explanation of what had transpired at Indianapolis ; if that could be considered an employment, that is the only employment that ever existed between him and me in respect to the M. Zier & Company matters.

Q. Was that a matter of consideration? Of dollars and cents, or in what capacity?

A. Oh, no; pure friendship.

Q. Now you say that upon Thursday morning when you got there you went directly to the court house, and as I understood you Mr. Sachs was with you and you there found Mr. Utz and Kelso?

A. Yes sir.

Q. Did Mr. Sachs on that occasion say anything to Mr. Kelso or did Mr. Kelso make any request of him to the effect that he become the attorney for the receiver?

A. Not that I heard.

Q. That is, be his attorney whenever he should be appointed receiver instead of the Trust Company?

A. No; no such statement as that was made, and it seems to me that at some time, going across back home Mr. Sachs said to me that he was looking for no job on this side of the river,—talking about the State of Indiana; said that he had enough business of his own, and he wasn't in any wise interested.

Q. You did get a hearing, you and your attorney Mr. Sachs, in regard to the contempt matter before Judge Utz, did you?

A. You mean as to my contempt?

Q. Yes.

A. On Saturday.

Q. On Thursday at least his anger—

A. (Interrupting) I am not so sure that on Thursday I knew that the rule for contempt had been issued ; On Thursday morning I was filing my report and petition showing that I had been to Indianapolis and asking for an expunging of the record which I have spoken about.

Q. That was what I was getting at. Now I want you to explain what it was that Mr. Sachs was to represent you in, in that matter? In what respect was he to represent you on that issue?

A. Mr. Sachs was simply there to aid me, as far as he could, to accomplish what I was trying to do, which was to clear my skirts as far as possible of any blame in Jude Utz's eyes.

Q. You say you left there about a little before 12 o'clock? You were not there in the afternoon of Thursday?

A. Thursday afternoon I was sick.

Q. Did Mr. Sachs return with you?

A. Yes sir.

Q. Now at the interview there, Mr. Watts when Col. Jewett was making his talk before Judge Utz, and when Mr. Sachs perhaps had asked him some question in regard to the possession of the property, I believe you say that Mr. Kelso did ascertain by use of the telephone that the property had already been turned over?

A. Yes sir.

Q. To the receiver in bankruptcy?

A. Yes.

Q. Now what did Mr. Sachs if anything say at the time that that announcement was made to the gentlemen there in that party?

A. That was on Thursday morning?

Q. Yes sir.

A. My recollection is that when that occurred Mr. Sachs made the remark that that disposed of the matter.

Q. You were requested, together with Mr. Sachs, to return on Friday afterwards, by phone?

A. Well I only know that Mr. Sachs told me that Mr. Kelso told him that Judge Utz wanted us back there.

Q. You did return there?

A. Yes sir.

Q. Were you with Mr. Sachs all the time that you were there on Friday?

A. Friday?

Q. Yes.

A. Friday?

Q. Yes sir.

A. Oh no; not with Mr. Sachs all that time.

Q. Thursday, I mean; I said Friday; I meant Thursday?

A. I think we were, unless I may have gone to the Clerk's office, or to Jewett's office without him. We were substantially together the whole time, yes.

Q. Did you at any time, Mr. Watts, commencing with Wednesday, and down to the end of the transaction, or these conferences, at any time ever hear Mr. Sachs say anything looking to the retaking of the property from the receiver, or insisting that it could be done, or that it ought to be done, or aiding or abetting or advising the retaking of the property from the bankrupt receiver?

A. I don't recall anything that he said or did with that respect—in that respect—but I do recall—

The Court: Well you have answered the question. There is too much explanation; just answer the questions; it takes too much time to go further. You have answered the question that was put.

Q. During any of that time did you hear him advise against such action?

A. I don't remember that I heard him at any particular time advise against such action, but Judge Utz—

The Court: You are not asked what Judge Utz did. You are taking up too much time with explanations.

Q. Did you hear him at any time advise Judge Utz to desist from any further interference with the property?

A. No, but I heard Judge Utz—

The Court: You are not asked what Judge Utz did; answer the question; it takes to much time and makes too much record.

Q. I will ask you to state what Judge Utz said in regard to any advice Mr. Sachs had given him?

A. Judge Utz said that Mr. Sachs had said to him that if there was to be the appointment of a receiver for the purpose of taking that property, it would mean that he must call out his militia.

The court: That is hearsay, of the very worst kind.

Mr. Hester: I move to strike it out.

The Court: No, let it stand; let us get along.

Q. How long were you there Saturday, Mr. Watts?

A. I think we were there from about noon until probably five o'clock in the evening.

Q. Were you with Mr. Sachs during that entire time?

A. Well I don't recall. No, I wasn't with him during the entire time, no sir.

Q. What time? What part of the time, if any, were you away from him,—separated from him?

A. My recollection is that we got there shortly before noon and it was then, and shortly after noon that I was talking with the Jewetts about the bankruptcy proceedings.

Q. How long were you separated from him during those two times?

A. Not a great length of time. We lunched together.

Q. I believe you said you went from the train to lunch, did you, or not, or was that the day?

A. No, I think that must have been an error; we must have gotten over there shortly before noon, and that I saw the Jewetts that morning just before lunch, and just after lunch.

Q. Where did you leave Mr. Sachs at the time you went to see the Jewetts?

A. I declare I don't believe I can say, unless possibly he went to the court house and we met there.

Q. Did you at any time before you came into the court room here have any knowledge of the change of record in this case, that is an addition to the petition of advice and addition to the order that was made on that petition?

A. No, sir.

Q. When was it discovered first as far as you know?

A. Last night.

Q. By the Court: Did you ask him when he first learned of it.

Mr. Smith: Yes sir.

Q. Do you remember any discussion at any of these meetings wherein it was insisted by some that they could take the property under the Indiana Statute and that Mr. Sachs made some statement in regard thereto?

A. I believe that was on Thursday after Mr. Kelso had telephoned and ascertained that the property had been delivered over. We were seated there.—

The Court: Read the question Mr. Reporter.

The question was read.

The Court: If that is true say yes, if not not.

A. Yes sir.

Q. By Mr. Smith: Will you please give the statement and the time and place as near as you can fix it?

A. It was on Thursday morning that we have been talking about after Mr. Kelso had telephoned to Fred Sauer as the secretary of the Trust Co., the receiver, that by Mr. Kelso announced that he thought that property could be taken under an Indiana Statute, whereupon Mr. Sachs said that as far as he knew, he knew only Kentucky statutes and he knew nothing about that sort of thing. He had been asked some hypothetical questions which involved the matter about that time and was asked that question at that time. He said he knew nothing about the Indiana Statutes.

Cross-examined by Mr. LaFollette:

Q. When you first became connected with this proceeding, it was at the request of the agent of Ryerson & Son at your office. Did you know before that that there was probably to be a suit instituted?

A. In what way do you mean?

Q. I mean did you have information before you had the conversation with the agent of Ryerson & Son that there would probably be a suit instituted against Mr. Zier & Co.

A. No sir, not at all. My first knowledge of it was on Mr. Jackson's appearance.

Q. Before you commenced any proceeding you had a conference with Harry Jewett?

A. Yes sir.

Q. At whose suggestion did you do that?

A. Mr. Jackson suggested it, relating to me certain facts which he said had taken place in Chicago.

Q. After you had that information, did Henry Jewett come to your office?

A. Yes sir.

Q. Did you and he have a conference in regard to the situation and the financial condition of M. Zier & Co.?

A. Yes sir.

Q. Did you learn from Mr. Jackson that there had been recent payments on their claim of $3100?

A. I do not know that I learned it at that moment, but I did close to that time.

Q. Before you filed a petition for a receiver?

A. I think I did.

Q. Did you from any information you received, either from him or from Henry Jewett, learn that there had been other payments recently made by the company.

A. I think not.

Q. Did you know then there had been a payment made to Minnie Zier?

A. I am very sure I did not. And that the information here at this trial was my first knowledge of it.

Q. Did you and Henry Jewett talk together before you filed the petition in the Floyd Circuit Court about the probability of there being bankruptcy proceedings?

A. I don't think we did.

Q. You did know that under the condition of the concern that there might be such proceedings instituted by the creditors?

A. Certainly I did.

Q. You think that was not talked about?

A. I do not believe it was.

Q. Then after you filed the petition, you had arranged before that that Mr. Jewett would appear to the action without delay had you?

A. Yes sir, that was arranged. Mr. Jackson said the suit had to be brought and Mr. Jewett understood we were going to bring it and he agreed to appear.

Q. How soon after your conference with Mr. Jewett did you file the petition?

A. I should say our conference was held at 11 o'clock in the morning and the petition was filed about 3 o'clock in the afternoon.

Q. Had you had any conference with the Judge of the Floyd Circuit Court before you went over to file the petition?

A. I had not.

Q. On the filing of the petition and the appearance by Mr. Jewett the receiver was appointed without delay.

A. Yes sir.

Q. Following that you advised with the New Albany Trust Co. as its attorney?

A. I did.

Q. It was your advice as such attorney, was it, that the order was made on the 24th of January to enjoin creditors from taking any steps in any way except by intervention in that particular case?

A. It was.

Q. Did you prepare the order that was made as the result of that meeting?

A. I did.

Q. Had you at that time learned that there was likely to be bankrupt proceedings instituted?

A. On the 24th of January?

Q. Yes.

A. No sir.

Q. After there was a petition filed in bankruptcy how soon did you have notice of it?

A. I think I learned of it about the 12th or the 13th of the month. It was filed first on the 6th. I don't think any mention was made of that and then a supplemental pleading was filed on the 11th.

Q. And that you learned of on the 12th or 13th?

A. Yes sir I think so.

Q. Then on the 14th of February you went into the Floyd Circuit Court with a petition setting forth the facts that bankruptcy proceedings had been instituted and that an order had been issued and that a receiver had been appointed?

A. I did.

Q. Had you a copy of the order that had been made in the United States court then?

A. I don't think I had.

Q. You did know at that time that Mr. Connor had been appointed receiver by the District Court?

A. Yes sir.

Q. And Mr. Hester had filed in the Floyd Circuit Court a petition asking an order that the property that was then in the hands of the New Albany Trust Co. be turned over to Mr. Connor as receiver, had he not?

A. Yes sir.

By the Court:

Q. That petition contained a certified copy of the order of this court did it not?

A. I don't remember.

Mr. Miller: Mr. Hester says he has that petition.

Mr. Hester: They asked me about it this morning and I said that I had it in the office. It got mixed with Mr. Wilhoyt's papers and he sent it down to me.

By Mr. LaFollette:

Q. Anyhow that petition was filed in Floyd Circuit Court on Saturday which was the last day of that term?

A. Yes sir.

Q. You on the same day filed your petition which included the request of the Floyd Circuit Court that you be directed to proceed to Indianapolis and present the matter of the jurisdiction of the Court here and get an order if possible to withdraw the order that had been made in regard to Mr. Connor taking the property.

A. To modify it, yes.

Q. Among other things you asked at that time that the Floyd Circuit Court issue a decree and order restraining Mr. Connor, and all other persons, the petitioning creditors in the bankruptcy court and so forth, from interfering with that property of M. Zier & Co.? Did you not?

The Court: And the United States marshal.

Q. Including the United States marshal, Henry C. Pettit?

A. Yes sir.

Q. You had action taken on that petition on that day did you not?

A. Yes sir.

Q. You also, did you not, as attorney for the New Albany Trust Co., receiver, had the court continue until the next term the petition which had been filed by Mr. Connor as receiver of this court?

A. I did not know that I did do that.

Q. Do you know that there was such action taken on that?

A. Yes sir.

Q. Did you as attorney in the case, having the other order made, did you take any active part, any steps, in regard to that order?

A. Let me answer that this way. That I asked Mr. Hester to take a position with respect to whether his appearance by his petition was general or special—general or limited, and he refused to do it saying that the paper showed for itself what appearance it was. I left there shortly after Judge Utz went off the bench and then went on to my office and came to Indianapolis without knowing anything about what order was entered.

Q. You as attorney for the Trust Co., and Mr. Hester as attorney for the receiver Connor as to what kind of an appearance he was making?

A. Yes sir.

Q. In discussing that, did you take any position in regard to what the court should on the petition, as to what order he should make?

A. I don't think I did, because I did not know what Mr. Hester was trying to do.

Q. You knew that he was asking to have the property turned over?

A. Yes sir.

Q. That was what he was trying to do?

A. Oh yes.

By the Court:

Q. What difference did it make whether it was a special of a general appearance?

A. I thought it made this: that it was a question whether or not he was within that jurisdiction and would be bound by the orders of that court generally made in the disposition of the estate, in the settlement of the contracts the receiver had entered into, the payment of various costs, expenses, commissions, fees, and matters of that character before the corpus of the estate was to be turned over, if it was to be turned over, if it was turned over. On appearance for the simply purpose of taking the property I conceived that probably those questions might not be allowed to be tried.

Q. What other purpose was set forth in that petition except to ask Judge Utz to order his receiver to turn the property over to the receiver of this court? Was there anything else in that petition?

A. I read it very hurriedly and I do not know, I cannot say.

Q. Was it from Mr. Watts' petition? securing that order? that you read the language to Mr. Kelso when he was on the stand, Mr. Smith.

Mr. Smith: Yes sir that was the order made on the petition.

The court: Was it the order or the petition?

Mr. Smith: I read the style of the petition and then I read the order.

The court: Have you that there?

Mr. Fairleigh: There are two separate orders. One on Mr. Hester's petition, made in advance of the filing of the petition of the New Albany Trust Company.

The Court: I want that extract that Mr. Smith read to Mr. Kelso, I want to see that from the order itself or the petition, or both, but proceed with the examination.

By Mr. LaFollette:

Q. Did you not at that time desire to have Mr. Hester state to the court that he was making a general appearance in that court?

A. I did, or at least I wanted him to take a position and he was refusing to do it. If he had made a general appearance and so stated so that there could be no question about it, I should not have come to Indianapolis.

Q. By the Court: Was there anything in the petition or in the proceedings there to indicate a special appearance—was there any limitation whatever in it?

A. The petition was peculiarly worded. I wish it were here. Your Honor has called for it several times and I have been anxious to get it and have asked for it.

Mr. Hester: Whom have you asked?

A. The clerk.

Q. Did you ever ask me?

A. My brother asked you for it.

Q. When?

A. Yesterday.

Q. But before that?

By Mr. LaFollette:

Q. You had in mind at the time that if he came into that court and made a request of the court on a general appearance for any order, that he would thereupon be bound by whatever order was made?

A. I did indeed.

Q. Why did you say now that if he had stated that he was making a general appearance you would not have come to Indianapolis?

A. For the reason that I had little time to think about the matter at all. I had already arranged with Judge Anderson to appear here and I had a great deal to do I could not spend time in New Albany when Mr. Hester would not take any position with respect to his appearance and I had to get to work and get to Indianapolis, which I did.

Q. By the Court. You drew the order for Judge Utz on that day, the 14th, did you not?

A. I did.

Mr. Farleigh: Which order?

The Court: The order on his petition.

The question was read to the witness.

A. Yes, sir.

Q. By the court. In that order this is said: "And the said receiver" that is the receiver of that court, "is hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance only, by petition upon such appearance only lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels and to suggest to said court the orders of this court and the fact that had it been fullly informed, as is believed by this court, its order with respect to the assets herein would at the most have been a direction to make an application to this court at the proper time and in the proper

way for the delivery of the said assets to such district courts receiver or trustee after proper disposition and settlement of the matters herein. I wish you would state when the proper time and how the proper way would have been for the receiver of this court to apply to that court for such order?

A. I can only give your Honor my opinion.

The Court: That is what I want to know.

A. My opinion as gathered from the various cases in the Supreme Court.—

The Court: I don't care where you gathered it, just tell us your opinion.

A. My opinion is that Mr. Hester for the receiver should have applied by petition in a general appearance asking for that property and proposing to be bound by the orders of that court with respect thereto.

Q. That was your idea?

A. Yes, your Honor please. One moment. As the Supreme Court of the United had decided.—

Q. I didn't ask you what the Supreme Court of the United States had decided. Strike that out. I want to know your opinion as to what was the proper time and way to do that. I am not asking for your authorities.

A. Upon the hearing of that petition, if it had been denied an appeal, would have laid, to the Court of Appeals or the Appellate Court of the State of Indiana and then because it was a bankruptcy matter to the Supreme Court of the United States, that was my opinion.

Q. So your purpose was to prevent the getting of possession of that property by the receiver of this court?

A. No.

Q. Your purpose was to require the receiver of this court to go around through the state Supreme Court through the United States Supreme Court to get his rights.

A. No. May I now explain in answer to those two questions?

Q. You may if you want to.

A. My purpose, as in my opinion I thought it ought to be done, was to have simply a trial of the question of whether the creditors had bound themselves by what had been done in the State court, whether the receiver could take the property now, because of their being bound and if the receiver could take the property then by reason of assent and acquiescence, that the contracts, fees, commissions and all those matters be disposed of by the Floyd Circuit Court.

Q. Then your opinion as a lawyer was if the petitioning creditors in the United States District Court had by some conduct elsewhere estopped themselves from proceeding here, you proposed to try that question in the Floyd Circuit Court, did you?

A. I do not know that I did propose that.

By Mr. LaFollette:

Q. Did you know before you left the court on that day that the petition filed by Mr. Hester to have the property turned over to the receiver of this court had been continued to the next term of the court, which did not convene until the 9th of March?

A. No sir, I don't think I did. I don't think after Mr. Hester and I got through with our arguments over there that I knew anything further about that petition.

Q. As attorney for the receiver of the state court, did you go away without knowing what was being done by the state court?

A. Yes sir, because I was anxious to get up my pleadings to come here to Indianapolis and I had no time for anything else.

Q. You left before the court adjourned Saturday?

A. Yes sir.

Q. The Monday following you came to Indianapolis?

A. I came on Sunday.

Q. The Monday following you were here and also the Tuesday?

A. Yes sir.

Q. Argued the question and reached the conclusion and went back to New Albany on the evening of the 17th.

A. Yes sir.

Q. Or rather to Louisville that evening, you did not go to New Albany?

A. No sir, I went to Louisville.

Q. When did you next go to New Albany?

A. Wednesday afternoon following.

Q. Had you had any notice from Judge Utz or any one at New Albany as to the condition of affairs there before Wednesday afternoon?

A. No sir.

Q. I believe that you stated that you took Mr. D. A. Sachs to New Albany with you on Wednesday afternoon?

A. Yes sir.

Q. What did you have him go over there with you for if you had not heard anything from there and no charge was against you and you had come up here and performed your duties as fully as you could for the New Albany Trust Company and in good faith reached a conclusion and gone back home prepared to present the matter to the Floyd Circuit Court?

A. I don't think I have admitted that I reached any such conclusion.

Q. Did you not say when you left here that you would turn the property over?

A. I did.

Q. Did you do that without reaching a conclusion that you would?

A. No sir, my conclusion was that I would.

Q. If you had reached that conclusion that you would did you not in fact feel that you had presented the matter here as fully and fairly as you could?

A. I do not know that I can answer that question, the way you want it answered.

The Court: He don't want it answered anyway; just tell the truth.

A. The truth about the matter was this: I agreed to turn it over. So far as arguing it fully and freely, Judge Anderson accorded me a good deal of time, but I did not get over all of my authorities before reaching the end of my argument because of the charge of discourtesy and because my client said he would deliver over the property, and I said I would advise its delivery.

By Mr. LaFollette:

Q. There was nothing further for you to do on that proposition if your client had reached the conclusion that it would turn over the property and so notified you, there was nothing further for you to say was there?

A. I thought there was a good deal for me to say to Judge Utz, I thought there was and I did say it.

Q. Was there any reason why you should have a lawyer go over to help you say it?

A. Yes sir, in my opinion there was.

Q. What was it?

A. I simply wanted Mr. Sachs to go over there and as far as he could help square me with Judge Utz about the matter.

The Court: What day was that you went over?

A. Wednesday.

Q. He was there Thursday, Mr. Sachs was?

A. Yes sir.

Q. And Friday?

A. Yes sir.

Q. And Saturday?

A. Yes sir.

Q. How long did you expect it would take him to square it with Judge Utz?

A. I don't know how long, but in the meantime the rule had been issued.

Q. Not until Saturday?

A. Not the rule, but the rule down there against me.

By Mr. LaFollette:

Q. What was there in the situation that induced you to think that you would have trouble with Judge Utz because

the order that had previously been made by the United States District Court was decided after your presentation of the matter, which still remained in force?

A. There was this in the situation: That the order directing the receiver and me as its attorney to come to Indianapolis directed us to come by limited appearance and protestation only, but not for a general appearance and only for a limited appearance. Mr. Jewett as vice president of the receiver, said on the floor of the court room, that he would give up the property. I, as its attorney, and as an officer of Judge Utz's court, I had been sworn in during the term, said I would advise it. There was that in the situation to make me feel very uncomfortable. I felt that I had exceeded the authority that Judge Utz had sent me up here with.

Q. If you were directed by Judge Utz to come up here and present the matter to the court, did you not understand that that carried with it the matter of getting a decision upon the proposition according to the judgment of this court?

A. No; I did not.

Q. Did you expect to come up here and get a particular kind of a decision, or go back and have trouble with Judge Utz about it?

A. No sir I did not.

Q. Didn't you expect the matter that had been presented regularly in the court had been presented by Judge Utz without severe criticism of you?

A. If we had stood—

The Court: Answer the question.

A. I expected no criticism from Judge Utz if I followed his instructions.

Q. There had been no charge made against you that you knew of up to that time?

A. No sir.

Q. When you went over on Wednesday evening, did you immediately go before Judge Utz in company with Mr. Sachs?

A. Yes sir.

Q. Was there any action taken that evening by Judge Utz in answer to your statement?

A. No sir.

Q. Did Mr. Sachs have any duties to perform in your behalf that evening before the Judge?

A. No sir, except to say,—well he spoke to Judge Utz about the situation—

The Court: You have answered the question.

Q. There was nothing done there that evening?

A. No sir.

Q. How did it come that following that you went over to Mr. Kelso's office?

A. Judge Utz wanted a conference of the attorneys in the case, because—

Q. I don't care about the because. He wanted a conference of the attorneys?

A. Yes sir.

Q. What did you go over to Mr. Kelso's office for?

A. To ask Mr. Kelso to meet Judge Utz in the morning at Judge Utz's request.

Q. Is not there a telephone in Judge Utz's room?

A. I believe there is?

Q. Is not there a telephone in Mr. Kelso's room?

A. Yes sir.

Q. If he wanted Mr. Kelso over there next morning, why did he not telephone to him?

A. He evidently had telephoned him when we arrived.

Q. So that it could not be possible that you went over to bear a message to Mr. Kelso that he wanted him in the court room next morning?

A. It was exactly possible.

Q. And he had already been notified by telephone when you got there?

A. He told us when we got there.

Q. How long did you remain at Mr. Kelso's office and what matters were talked of?

A. We remained at Mr. Kelso's office, I should ssy, in the neighborhood of half an hour.

Q. You mean you and Mr. Sachs.

A. Yes sir.

Q. Did you talk to Mr. Kelso about his having any connection with the matter in the event of the Trust Co. resigning.

A. No sir.

Q. Do you know why you went over there to explain to him your business at Indianapolis and the result of the efforts to hold the property.

A. I know why I went over there.

Q. You say you went over there to tell him to come to Judge Utz's office next morning?

A. Yes sir.

Q. That you say is the only purpose of going there?

A. Exactly so.

Q. But after you talked to him about that, you remained something like a half an hour?

A. I think it was about an half an hour in all that we were there.

Q. Then your remaining there and his conversation had nothing to do with his going to the room of Judge Utz next morning?

A. Not at all.

Q. Why was it that the question came up that was discussed with Mr. Kelso about the removing or the resigning of the receiver in the state court?

A. I have not said any such thing was discussed.

Q. What did you talk about over there?

A. Mr. Kelso asked what had transpired? And I told him and he told us what he had done in one or two instances in Federal Courts in which he had appeared.

Q. On the next morning, you say you went back to New Albany, did you not?

A. Yes sir.

Q. For what purpose did D. A. Sachs go back with you next morning?

A. Judge Utz was in such a humor when we left there, and he had requested me to come back and I believe also had requested Mr. Sachs to come back and we went.

Q. Had Mr. Sachs made an appearance for you?

A. No, sir.

Q. If he had made no appearance for you on Wednesday before, and I believe you said awhile ago that he had never had any connection with the case in any way, why was he to go back or be ordered back if he was not connected with the case in any manner and had not entered any appearance for you?

A. I don't think he was ordered back in any sense, nor had he made any appearance for me in the sense of an appearance. He was talking in my behalf with Judge Utz.

Q. Why did he go back on the next morning?

A. He went not only because Judge Utz requested it, but because I requested it.

Q. Was he still going back to appear for you?

A. Yes, sir.

Q. That was his purpose was it?

A. Yes, sir.

Q. Now on the next morning, Thursday, what did he do then.

A. Thursday morning was the morning on which I filed—

The Court: The question is what did he do.

A. We went over there together, I do not remember anything in particular that Mr. Sachs did that morning. He was asked some hypothetical questions were put to him and he was asked his opinion.

Q. What about?

A. This that and the other matter which would involve questions in this case.

Q. Was that asked as a lawyer, simply present without being connected with case?

A. Yes sir.

Q. What did he do on Thursday for you as your attorney?

A. I don't think he did anything for me except that he was with me.

Q. What was done on Thursday, either by you or him?

A. On Thursday I filed a report and petition of the Trust Co., signed by myself—

The Court: You were not asked what it showed.

Q. What action did Judge Utz take upon that petition?

A. He entered an order denying the prayer of that petition and also an order citing me to appear on the following Saturday to appear for contempt of his court.

Q. Had the order been made against the Trust Co. charging that it was in contempt also?

A. The same kind of order was made, I think on the same day when the Trust Company filed its separate pleading through Mr. Jewett.

Q. Was the statement made by Judge Utz that the Trust Co. was in contempt before he said anything about you being in contempt?

A. I don't remember that that was so.

Q. Did it not occur like this? That he said in regard to the report that was filed by the Trust Co. that he thought it was in contempt of his court in taking the steps it had taken and you said to the court if you make that order against the Trust Company you should make the same order against me?

A. I don't think I did.

Q. By the Court: You don't think you did. What is the fact about it?

A. I have answered the fact—I know.

By Mr. LaFollette:

Q. That order was made against you without any suggestion on your part?

A. Yes sir.

Q. You remained in New Albany, did you not?

A. No sir.

Q. What time did you leave there?

A. About twelve o'clock.

Q. Did Mr. Sachs go back with you?

A. Yes sir.

Q. Had there been any conclusion reached at the time you left there on Thursday as to the appointment of another receiver in lieu of the Trust Company?

A. No sir, I don't think there had been on Thursday.

Q. Up to the time you left there on Thursday, Mr. D. A. Sachs had made no appearance for you before Judge Utz, no entry of any kind had been made showing his appearance?

A. No sir.

Q. No action had been taken by him as your attorney in any matter before the judge?

A. No sir..

Q. And you went over in his company at noon of that day?

A. Yes sir.

Q. The order to show cause why you should not be punished for contempt was set for Saturday afternoon at three o'clock?

A. Yes sir.

Q. Friday you went back there?

A. Yes sir.

Q. And Mr. Sachs went with you?

A. Yes sir.

Q. Tell the Court what occasion there was for Mr. Sachs to go back there when you were not ordered to be there until Saturday afternoon?

A. The occasion was this, as appears from the record, the rule against me was issued on Thursday, and Mr. Sachs reported to me that Mr. Kelso telephoned him Thursday afternoon thas Judge Utz wanted us over there Friday morning.

Q. Who telephoned you?

A. Mr. Sachs reported to me that Mr. Kelso telephoned him that Judge Utz wanted Mr. Sachs and me over there on Friday. And when I went over there on Friday I was served with the rule.

Q. Did you have any business over there on Friday other than to go over to be served with the rule?

A. I had other business on Friday. I did not go over for the purpose of being served with the rule?

Q. Did you have any other business before Judge Utz that day in connection with this case?

A. On Friday?

Q. On Friday.

A. Friday was what date?

Q. The 20th.

A. The question is did I have any business on Friday with Judge Utz in this matter?

Q. Yes.

A. I did.

Q. What was it?

A. In the afternoon I appeared before him as did also the New Albany Trust Company through Mr. Jewett, receiver,

with respect to the petition which had been filed for the removal of the receiver.

Q. Was the receiver removed by order of court that day?

A. Yes sir. And his bond was fixed.

Q. I say the receiver removed?

A. Yes sir.

Q. By the Court: Who presented that petition for removal?

A. Mr. Kelso, I think.

Q. Was that petition, read here today signed by Mr. Sachs?

A. Yes sir.

By Mr. LaFollette:

Q. Did you know that Mr. Sachs had signed the petition and verified it on his own oath to have the receiver removed and another appointed?

A. No sir, I did not.

Q. Had he said nothing to you about that?

A. No sir.

Q. Had you not learned by reason of your visits over to Mr. Kelso's office and the fact that Mr. Sachs was at Mr. Kelso's office, that he was joining with Mr. Kelso in the preparation of papers to be presented to Judge Utz?

A. No sir I had not.

Q. Did you not hear anything said at all up to that time about Mr. Kelso taking the appointment as receiver instead of the Trust Co.?

A. I don't think I heard that until Friday.

Q. You think that neither Wednesday evening or Thursday you had received any knowledge or notice or heard the matter talked of that Mr. Kelso was to be appointed after the discharge of the Trust Co.?

A. I am very positive I did not know anything of it or hear anything of it on Wednesday and I am quite certain that I did not on Thursday.

Q. What time on Friday did you hear it?

A. I should say along about three o'clock in the afternoon?

Q. Did you know then on that afternoon that a petition had been filed before Judge Utz for the removal of the Trust Company and that it had been removed and that Mr. Kelso was appointed and his bond fixed at $30,000, and that he had qualified as such receiver and that the orders had been formulated and a demand upon Mr. Connor for the property, his refusal anticipated and the orders prepared for a request that a writ issue to the sheriff directing him to take the property and turn it over to Mr. Kelso.

A. Some of those things I knew about, not all of them.

Q. Which of them did you know about?

A. By Mr. Miller: I submit that that is too long a question and that it is not proper to put such a question to the witness. I think the question is entirely too long.

The Court: I think it is myself.

Q. I thought I would cover the whole thing by one question, but I can cut it up. Did you know of the appointment of Mr. Kelso as receiver?

A. Yes sir.

Q. Did you know that his bond was fixed at $30,000?

A. Yes sir.

Q. And that it was given?

A. Yes sir.

Q. Did you hear any talk about him giving that much bond?

A. I did.

Q. Who was present when that was being talked about?

A. Mr. Kelso, Judge Utz, David Sachs, Joe Sachs, and I.

Q. Did you know of the order being prepared directing him to make demand for the property on Mr. Connor receiver?

A. No sir I did not.

Q. Did you know that Mr. D. A. Sachs had signed a petition for the appointment of Mr. Kelso as receiver, upon which he was appointed?

A. I don't think, I knew it at that time.

Q. Did you know that Mr. Kelso stated to the judge that he could not be a receiver while he was appearing of record as attorney for the creditors in this case?

A. No sir, I don't think I knew that.

Q. Did you know that in answer to a statement of that kind Judge Utz directed that he withdraw as counsel for certain creditors and that an arrangement was made with Mr. D. A Sachs to appear for the creditors instead of Kelso?

A. No sir.

Q. Did you know that the order was made and attached to the entry of February 14th making it appear that Mr. Kelso withdrew as attorney for certain parties as of that date?

A. I infer you mean as of the times you have been speaking about?

Q. Yes, sir.

A. No.

Q. You did not know that until you came up here?

A. Only last night.

Q. Yet you say that D. A. Sachs, your very close friend, and an attorney living in Louisville came over—

By Mr. Miller: I submit that as argument.

The Court: I think it is too.

Q. There was no notice given you by Mr. Sachs that he was appearing—

A. Yes. That refreshes my recollection. I was served with the notice on Friday at noon that the United States Tu—— As counsel for Ryerson & Son, I was served with notice that a petition would be filed at three o'clock that afternoon.

Q. For what purpose?

A. I do not remember whether the notice itself expressed in detail the purpose but it was substantially that there would be a motion to remove the present Receiver and appoint another in its stead.

Q. And that notice that came to you indicated that it was on the petition of the United States Tube Co.?

A. Yes, sir.

Q. Represented by D. A. Sachs?

A. That I do not remember. I do not remember how that note was signed.

Q. On receiving that notice did you examine what kind of proceedings were filed?

A. No sir—I did not. I can explain why I did not.

The Court: You have answered the question.

Q. Did you hear nothing at all said about the matter of the expense of this Receivership on the part of Mr. Kelso at any of those times when you were present in his office?

A. I did not, that is, so far as my own connection was concerned.

Q. Did you hear anything said about his not wanting to incur any liability in it?

A. No sir—I did not.

Q. Did you hear any discussion in the office about the possibilities of his being in contempt of the United States Court if he took that position and sought to retain the property?

A. No sir—I did not.

Q. Did you hear anything said that if there was any punishment inflicted, it would not likely be anything more than a fine?

A. No, sir—I did not.

Q. Were the statements that were made at Louisville, the first you heard about there being a call on you for expenses.

A. Yes, sir.

Q. Had Mr. Sachs said anything to you about the expenses incident to it before that?

A. Oh no, not at all.

Q. I think you said in your original examination that there was some conversation between you and D. A. Sachs on your way from Louisville to New Albany about his employment over there that he was not looking for a job on this side of the river?

A. Yes, sir.

Q. When was that?

A. I could not attempt to fix the specific day but it was some one of those days. We were going home and he said that Mr. Kelso wanted to employ him as attorney and he was not looking for a job over the river and that he had told him they had a bar over there &c.

Q. Did he then say whether or not he had taken the employment?

A. I would not undertake to repeat his exact words?

Q. By the Court. Did he say anything that night that he had taken the employment?

A. No, sir; he said to the contrary.

Q. Did he at any time tell you that he had taken the employment?

A. No, sir; at no tine.

Q. Did you learn at any time that he had appeared and filed papers for Mr. Kelso receiver?

A. Only since that thing occurred.

Q. On the Monday following the notice that reached you about coming here when you had a conversation with Mr. Sachs and Judge Utz was present, did you hear the statement by Mr. Sachs that he would not come up here or rather that he would go somewhere else in preference because he did not want to testify against you?

A. He made no such statement.

Q. In your presence?

A. No, sir.

Q. You did not hear any such statement?

A. I am sure he made no such statement while I was there.

Q. Did Judge Utz come over there at the request of either you or Mr. Sachs or on his own motion?

A. On his own motion if the report was correct and I have no reason to doubt it.

Q. Do you know for what purpose he was there?

A. No, sir—I do not.

Q. What part did he take in the consideration of the question at the conference—what did he say to you and Mr. Sachs about it?

A. He was very much disturbed at what had occurred and was to a large extent asking questions, not participating in the question of what sort of response was to be prepared but discussing the probable settlement of the whole matter by Mr. Kelso coming to Indianapolis and simply surrendering to this court by leave of Judge Utz's court.

Q. By the Court: Who was discussing that?

A. Judge Utz.

Q. By Mr. LaFollette: That is on his coming up here and surrendering the property on his leave?

A. Yes, sir; that was one of the questions discussed in which Judge Utz took part.

Q. What did he say about giving such leave?

A. I do not remember now who suggested it but it was suggested that Mr. Kelso might possibly dispose of the whole matter—the whole contempt proceedings by simply surrendering and surrendering with the leave of the Floyd Circuit Court. It was further suggested that Mr. Hester should be seen with respect to that. Mr. Judge Utz thought that Mr. Stotsenberg might be seen with regard to it but declined to have anything to say to Mr. Hester about it.

Q. By the Court: When and where was this?

A. In Mr. Sachs' office on Monday.

Q. Different methods were talked of of disposing of the matter without a response other than by the act of Kelso?

A. Well, yes. The matter was discussed from every side.

Q. There was something said during your examination about an order made by this court on the 17th which you say you did not know of?

A. Yes, sir.

Q. You did know of the order which was issued prior to that time the enforcement of which you had asked to have delayed?

A. Yes sir.

Q. When you went back down there you told them that order was still in force?

A. Yes sir, my report shows that.

Q. You knew if an act in the way of taking the property from the receiver was committed it would be such a matter of interfering with the orders of this court relating to that order as though the like order was made on the 17th?

A. That is a question of law which I would not like to answer.

By the Court: Do you say you cannot answer it?

A. I respectfully submit that that is a question of law which I ought not to be made to answer.

The Court: I will not require you to answer it.

By Mr. Miller:

Q. You were asked by Mr. La Follete with reference to the commencement of that suit down there by Ryerson & Son. A summons was issued in that suit, was there not, at the time it was commenced?

A. Yes sir.

Q. And placed in the hands of the sheriff?

A. Yes sir.

Q. You were asked a little bit ago by Mr. LaFollette whether you knew of the preparation and filing of any

papers by Mr. Sachs as the attorney for Kelso, receiver? And you stated that you did not know of it at the time, but only knew as you have learned since. I will ask you if you have now any knowledge that Mr. Sachs filed any paper for Mr. Kelso at all?

A. Do you mean in the sense of handling it physically?

Q. Presenting it in court?

A. No sir; I have no knowledge of it.

Q. You simply have been informed that he prepared a paper or rather signed it?

A. That is what I had reference to when I made that answer.

Q. Is your information that he ever did any thing more than to sign it and swear to it?

A. No sir; that is all.

Q. Have you any knowledge at any time of Mr. Sachs acting or Mr. Kelso as receiver other than what you have stated, namely signing and swearing to that paper?

A. No sir.

Q. In all the times that you met Mr. Kelso and Mr. Sachs together, please state to the court if you ever heard Kelso say anything to Sachs as his attorney?

A. No sir.

Q. And in all those times, did you ever hear Mr. Sachs say anything to Mr. Kelso implying that he was his attorney?

A. No sir.

Q. As receiver of course I am asking. When did you first learn of have any intimation that Kelso claimed that Mr. Sachs was ever his attorney as receiver in this matter?

A. I do not believe I could fix that date.

Q. Did you have any such notice or knowledge prior to the commencement of some of these contempt proceedings?

A. I think not.

Q. You say you think not. Is that your best recollection?

A. That is my best recollection.

Q. Did you ever hear that Mr. Kelso ever made such claim until after you know that Mr. Sachs' name had been included in this citation from the Federal Court?

A. My best recollection is I did not.

Q. Did you ever know that any such suggestion had been made by Judge Utz until after the same time?

A. No sir.

By the Court:

Q. Is there any other firm known as W. W. and J. R. Watts in Louisville?

A. No sir.

Q. Did your fact of W. W. Watts and J. R. Watts at any time represent the petitioning creditors against the John A. Etheridge Furniture Co.?

A. Yes sir.

Q. You represented the petitioning creditors?

A. Yes sir.

Q. Judge Barr is the judge of what District court?

A. He was judge of the District court of Kentucky?

Q. Prior to Judge Evans' appointment?

A. Yes sir.

Q. I will ask you if you as one of the members of W. W. and J. R. Watts appeared before Judge Barr while he was on the bench at Louisville, in the matter of the John A. Etheridge Furniture Co.?

A. I did.

Q. The question there was whether or not the court after the filing of an involuntary petition and a prayer for an adjudication could appoint a receiver?

A. Yes sir.

Q. You for the petitioning creditors took the ground that the court in that case should appoint?

A. I did.

Q. And you procured that sort of a decision in your favor?

A. Yes sir.

Q. And the receiver was appointed?

A. Yes sir.

Q. And Judge Barr in that decision rendered in behalf of your client, used this language: "As congress has been empowered by the Federal constitution to pass a bankrupt law, it may be assumed, we think, as true, that the jurisdiction of the bankrupt court is exclusive, and must be for so far as it is necessary to adjudicate that the party is bankrupt and settle and liquidate the estate of the bankrupt thus declared; and that this jurisdiction cannot be concurrent with that of the State courts, but must be exclusive, and that the insolvent laws of the state are suspended after the passage of the bankrupt act. Sub-section 3 of Section 71 provides: "Proceedings commenced under said insolvent law before the passage of this act shall not be affected by it." This would clearly indicate that proceedings commenced after the passage of the bankrupt act cannot be effectual to prevent the administration of the bankrupt estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate instead of the creditors as provided in the bankrupt law, or to allow the State court to take jurisdiction of the estate of the bankrupt and administer and distribute it, would effectually destroy the efficiency

of any bankrupt act that might be enacted by congress and thus effectually destroy the power granted to congress to pass a bankrupt act" You read that opinion, after it was rendered?

A. Yes sir, repeatedly.

Q. You knew that when you appeared in this court by special and limited appearance to be the jurisdiction of this court?

A. Yes sir, but I would—

Q. Answer my question. You knew that when you stood in the chambers of this court and insisted that this court had no power to appoint a receiver and that the receiver of this court had no power to interfere down there, because the state court had taken jurisdiction first? You knew it then?

A. Yes sir.

Q. Now you can make any explanation you wish?

A. I have changed my mind about the law since that decision was rendered?

Q. You are against that decision?

A. Very much so.

Q. You now think that Judge Barr did not decide it right?

A. I think under the particular facts of that case he did.

Q. You think that decision was right?

A. Because Mr. Hyatt came in and prayed that he be made receiver and Judge Barr granted that prayer.

Q. Who was he?

A. The assignee of the state court.

Q. So that if this court had appointed the New Albany Trust Company instead of Mr. Connor, you think it would have been proper?

A. No sir, I do not mean that.

Q. I won't ask you to explain what you mean, but you may explain if you want to.

A. I would like to make this explanation, that since the decision in the Etheridge case there have been decided by the Supreme Court of the United States and by divers Circuit Courts of Appeals, the Burdees case, Bryan v. Burnheimer, the Nugent case, the Comingore case, Pickens v. Dent, In re Seiboldt, and such cases and my mind has undergone a complete change for what it was at the time when that opinion was rendered, which was early in the beginning of the present bankruptcy law.

Q. Tell what single one of those cases overturns the doctrine Judge Barr announced and which I have just read. Name the case. I have heard three days of argument on this matter and I never have heard the case announced and I would like to hear you announce it.

A. I think the principles--

Q. Just name the case.

A. All of the cases I have mentioned taken together.

Q. Name one.

A. The Comingore case for one.

Q. That is your judgment about it?

A. That is my opinion. In addition to which I say that the other cases with the opinion of the Supreme Court in Eyster v. Gaff and the old cases under the old law.

Q. Can you name one single case decided by the Supreme Court of the United States or by any of the Federal courts holding contrary to the doctrine that I read to you from Judge Barr that the bankrupt law is exclusive and suspends the operation of the state insolvency laws? If you can, I shall be pleased to have you name the case.

A. I want to say Judge that I won't undertake to name any single case which says the jurisdiction is not exclusive in bankruptcy matters.

Q. You won't undertake that?

A. No sir. I insist that that is the law.

Q. You will not undertake to furnish any case which holds a contrary doctrine, that when the bankrupt act is passed—at least whenever any proceedings are commenced under it, they suspend all proceedings under the state's insolvency laws. Can you name any case holding the contrary of that doctrine? I want the name of the case.

A. I think the Comingore case, the principles in the Nugent case and the principles in all the cases. I do not believe your Honor understands my idea. If you would let me explain it I would like to do it.

Q. I heard you the other day. You have not changed your ideas since the 15th or 16th of February?

A. Not at all.

Q. Did you call my attention to this case by Judge Barr when you were here presenting this case?

A. I don't think I did.

Q. Now you may explain your view of the law if you wish.

A. My idea of it is that you should contradistinguish between the jurisdiction of the bankrupt, the person, and his debts and his creditors on the one hand and his assets, which may be in the custody of another court on the other hand. I admit and insist and have always insisted that in bankruptcy, take the McKee case, before Judge Gregory in Kentucky,—

Q. Just state your opinion.

A. That the jurisdiction of the bankrupt is here, but it may be a very grave question as to whether the jurisdiction over his property is here.

Q. That is your view of it?

A. Yes sir.

Q. But you say upon your oath that in your opinion the jurisdiction of the bankrupt was in this court, but that the jurisdiction of his estate was not here?

A. Under the present circumstances, that is my opinion.

Q. By Mr. Hester: You said that Mr. Kelso represented to you in a conversation he had had with me on the 22nd, Sunday afternoon, he said that I said that the man Judge Anderson was after was yourself?

A. Yes sir.

Q. Did not Mr. Kelso say to you on that occasion that he inferred from what I said that Judge Anderson was not feeling very kindly on account of what you had done, instead of what you told the court awhile ago?

A. No sir, I don't think he said inferred. He took the positive position that Judge Anderson was after me. That is what alarmed me.

Q. Where were you when he said that?

A. In Mr. Sachs' office.

Q. When was that?

A. On Monday, both morning and afternoon, I think.

Q. In Mr. Sachs' office on Monday morning and afternoon February 23rd?

A. Whatever Monday was.

Q. In addition to what has been said, I would like to make this further explanation; a good deal has been said about the payment of $3000 and odd to Ryerson and Son within a few days of the institution of these bankruptcy proceedings.

A. I wish to say that on consideration of that matter I advised my client that as to a part—either all or nearly all of that $3100, there was no preference and when the proper time came defense on that basis will be made. In my opinion under the circumstances there was no preference.

By the Court:

Q. That is because of the recent amendment to the act?

A. No sir, that did not have anything to do with it, because we discussed that along in December, the 30th, and the amendment to the act was not passed until in February.

Q. Then you discussed whether this was a preference under the bankrupt statute about December 30th?

A. Yes sir.

Q. In other words, the purpose of the institution of that suit in the Floyd Circuit Court was to head off any bankruptcy proceedings?

A. Not at all. The purpose of the institution of that suit was to keep that plant as a going concern, as far as

might be, with a view to paying out as far as possible and possibly having a good settlement.

By Mr. Hester:

Q. If that be the case, why did not M. Zier & Co. under your advice and that of Mr. Jewett make a general assignment for the benefit of creditors instead of a receiver?

A. We did not discuss that.

Q. Could not the assignee under a general assignment for the benefit of creditors operate the plant just the same?

A. I doubt if he could.

Q. Could not the receiver appointed by the bankruptcy court operate the plant just the same as the receiver of the state court?

A. Yes, provided you can always get the judge to give the power to operate and I have had a great deal of trouble in things of that sort.

Q. Is it not supposed to be that the judge will do what is best for the interests of the creditors?

A. Yes sir, but I thought it was very much easier to get a receiver in the state court.

By the Court:

Q. You had no trouble in getting what you wanted from Judge Utz?

A. No trouble at all.

By Mr. Miller:

Q. You understood that the receivership in a bankruptcy case in the Federal Court—that the receiver is a mere temporary custodian of the property?

A. Ordinarily so.

Q. It is supposed to anticipate the appointment of a trustee or assignee?

A. Yes sir.

By the Court:

Q. If I understand you, your view of the law as recently determined, now is that this court had jurisdiction of the bankrupt and of the creditors, but may not have jurisdiction of the property—

A. That is my idea.

Q. Of the assets?

A. Yes sir.

Q. Do you understand that the bankrupt law provides that this court shall have the power, equitable powers to appoint receivers in certain cases?

A. Yes sir.

Q. And is also given power to enforce its orders?

A. Yes sir.

Q. Then even with the distinction you have drawn between the jurisdiction of the person and the estate, what

do you say as to the power of the bankrupt court to enjoin any interference with the property pending the bankrupt proceedings, filing the petition and pending the adjudication; do you deny that this court has this power?

A. That is a question—

Q. I want an answer to the question.

A. I cannot answer the question.

Q. You do not know whether this court has the power or not?

A. No sir.

Q. You do know this court issued such an order?

A. Oh yes, that is to say, I knew that this court issued the order of February 11th, whatever its terms are. I saw that order.

Q. That order was to the receiver down there and other persons to refrain from interfering with the property. You knew that?

A. No sir, I did not know it enjoined anybody but the receiver.

Q. You know that an order of that kind binds not only the receiver, but everybody who has notice of it?

Q. Yes sir.

By Mr. Miller:

Q. You know an order of that kind binds the receiver having the custody of the property under the state court, if the court issuing the order has the jurisdiction and power under the law to make such an order?

A. Yes sir.

Q. That limitation has to go with it?

A. Yes sir.

Q. And you know further if the court has not the jurisdiction and power to make such an order, then it is void?

A. That is my opinion.

By the Court:

Q. You are the witness and you are a lawyer. I would like to have you tell the court whether you are standing for defense on the proposition that the orders are void or whether you have not interfered with them.

Mr. Miller: I submit that a defendant in a criminal prosecution can not be put to answer that question.

By the Court: He is on the witness stand.

By Mr. Miller: But he cannot be put to answer that question. He has a right to put his defense on any ground.

The Court: And the court has a right to investigate whether it is true.

Mr. Miller: But I submit with the utmost deference the court has not the right to ask a defendant in a criminal prosecution where he locates his defense.

The Court: Do you appear for Mr. Watts?
Mr. Miller: Not directly.
The Court: Do you appear for him?
Mr. Miller: No sir, I do not; I try to be reasonably frank—
The Court: I want to know whether you appear for him?
Mr. Miller: I do not.
The Court: Do you object to answering that question?
Mr. Fairleigh: I object for him.
By the Court:
Q. Do you decline to answer the question?
A. Yes sir.
The court hereupon adjourned until nine o'clock.

THURSDAY, MARCH 12, 1903.

MORNING SESSION.

The court met pursuant to adjournment, present the same as on yesterday.

Mr. Miller: The first thing that we want to offer in evidence this morning is the petition that has been spoken of as in Mr. Hester's office; it has come in this morning; the petition filed by Mr. Connor in the circuit court of Floyd county, Indiana, at New Albany on the 14th day of February, 1903, and which is referred to in the entry made on that day.

Mr. Kealing: We have no objection.

Mr. Miller: That is an original paper of the record down there.

The Court: It may be copied in the record and the original returned.

Which paper so introduced in evidence is in the words and figures following, to-wit:

IN THE FLOYD CIRCUIT COURT,

JANUARY TERM, 1903.

Joseph T. Ryerson & Son }
vs. }
M. Zier & Company. }

TO THE HONORABLE W. C. UTZ, *Judge of the Floyd Circuit Court:*

Frederick D. Connor, receiver appointed by the United States district court for the district of Indiana, intervening in the above entitled cause respectfully shows to the court:

That on the 11th day of February, 1903, by the consideration of the United States district court for the dis-

trict of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said court; That he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by the New Albany Trust Company, heretofore appointed as receiver in this cause by this court; a certified copy of the order of the United States district court is filed herewith and attached hereto marked Exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys, and other effects of said M. Zier & Company now in its possession and control and to immediately file with this court its account in writing, showing the amounts of money collected by it and now on hand. The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
} *ss.*
County of Floyd. }

Frederick D. Connor, being duly sworn, on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT, *Clerk F. C. C.*
By William F. Ruoff,
Deputy.

Inland Steel Company, }
vs. } In Bankruptcy.
M. Zier & Company. }

Comes now the Inland Steel Company, petitioner in bankruptcy herein, which having filed its petition to have

M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein, which petition reads as follows: (Here insert). And the court being advised after due consideration, finds that the prayer of said petitioner ought to be granted and that a receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor, be, and he is hereby appointed as receiver herein of the property and effects of said M. Zier & Company, with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers, and effects of or belonging to said M. Zier & Company located at the city of New Albany, Floyd County, Indiana, and now in the hands of The New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd circuit court of Floyd county, Indiana. And said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material, and finished product within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak street of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that The New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor as receiver of the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the clerk of this court and file with the clerk of this court a bond and sureties to the approval of this court in the sum of Ten Thousand Dollars ($10,000), for the faithful discharge of his duties as such receiver and take the oath required by law of said officers.

February 11, 1903.

ALBERT B. ANDERSON,
Judge

I, Noble C. Butler, clerk of the United States district court for the district of Indiana, hereby certify that the above and foregoing is a true and correct copy of an order made and entered by the United States district court for the district of Indiana, on the records of said court, at New Albany, Indiana, on the 11th day of February, 1903, of which records I am the proper custodian.

NOBLE C. BUTLER,
Clerk, U. S. District Court.
By GEORGE B. CARDWILL,
Deputy Clerk.

[SEAL.]

(Endorsements.)

No. . .
Floyd Circuit Court
January Term, 1903.

Jos. T. Ryerson
vs.
M. Zier & Co.

Petition of Frederick D. Connor, receiver.

FILED
in open court,
Feb. 14, 1903.
Charles B. Scott,
Clerk, F. C. C.

Hester & Hester, Attorneys.

Mr. Miller: Now if Your Honor please, we have a number of character witnesses that we wanted to introduce, and we want to do that at this time in order that they may be discharged; they are judges of the courts down there at Louisville.

The Court: Well do you mean you want to introduce witnesses as to the reputation of the defendants?

Mr. Miller: As to their standing, yes sir in Louisville as men of integrity.

The Court: Affecting, of course, their credibility as witnesses.

Mr. Miller: Their credibility as witnesses, and the probability that they would intentionally do anything wrong.

Sterling B. Toney, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Judge Toney will you be good enough to state your name in full?

A. Sterling B. Toney.

Q. Where do you live?

A. Louisville, Kentucky.

Q. And have lived there for—

A. (Interrupting) Twenty-seven years.

Q. Have you held any official position there.

A. For seventeen years I have been upon the bench there, the local state bench, as judge of one of the law and equity courts, and I am now one of the chancellors,—the two chancellors.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. Very well, sir. Intimately I may say.

Q. Have they habitually practiced in your court and before you?

A. Since I have been upon the bench.

Q. Are you acquainted with their standing in Louisville as to their integrity and fidelity to duty?

A. I am.

Q. And as to their veracity?

A. Yes sir.

Q. Will you be good enough to state to the court the standing and reputation of Mr. Watts in that community with reference to these subject-matters?

A. Judge, Mr. Watts is regarded as one of the men who walks in the high rounds of the profession; he is a gentleman in every sense of the term, socially and at the bar, professionally. I have never known him in the seventeen years that he has practiced before me to be guilty of a discourtesy or to violate his word as a member of the bar; I have never heard it questioned.

Q. Now you may answer the same question as to Mr. Sachs, David A. Sachs.

A. I think Mr. Sachs is his senior, perhaps, at the bar, and my intimacy with Mr. Sachs is both professional and social; and I can say that same of Mr. Sachs that he has never in his whole career before me, and he has a large practice, forfeited that esteem; he is a man that walks a high round of the profession and I am sure there is not a judge in Louisville who would not accept his statement as he would a statement under oath; and I was amazed to hear—

Mr. Kealing: (Interrupting) Well never mind.

Mr. Miller: That is all.

Mr. Kealing: I have no cross-examination.

Emmett Field, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Will you be good enough to state your name?

A. Emmett Field.

Q. Where do you live?

A. Louisville.

Q. How long have you lived there?

A. I was born in Louisville and have lived nearly all my life there.

Q. What is your profession?

A. Lawyer; at present on the bench.

Q. How long have you been on the bench?

A. About eighteen years.

Q. Of what court?

A. Well originally the common pleas court, the Jefferson court of common pleas; that was subsequently changed, and now the courts are all consolidated into one circuit court; I am now one of the Judges of the Jefferson circuit court, common pleas division.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. Very well with both of them.

Q. Are you acquainted with the standing of those gentlemen in Louisville as men and as lawyers as to their integrity, fair dealing and veracity?

A. Yes sir I have been acquainted with both of them ever since they came to the bar, and probably was acquainted with them as students before they entered the bar, by being practically raised in the same city and largely in the same community; I have known them very well during all of that time, and there has never been a question concerning the veracity or the character or reputation in any other respect concerning these gentlemen that ever I heard of.

Q. Well what is their standing in that regard, those regards?

A. It is of the best.

Q. You are, I think, an instructor in the law school there are you not?

A. Yes, I have been with the law school about twenty years.

Witness excused.

Schackelford Miller, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Miller.

Q. Will you be good enough to state your name?

A. Shackelford Miller.

Q. Where do you live?

A. I live in Louisville.

Q. What is your profession?

A. I am a lawyer and at present I am one of the chancellors of the Jefferson circuit court.

Q. How long have you been upon the bench there?

A. Seven years; two years by appointment and five years of term elected by the people.

Q. Are you acquainted with David A. Sachs and William W. Watts?

A. Yes sir, I know them both very well.

Q. How long have you known them?

A. Well I could hardly say; I have known them nearly all my life, probably twenty-five years, or longer.

Q. Are you acquainted with their reputation in Louisville personally and at the bar as members of the bar, for integrity, fair dealing and veracity?

A. Surely so.

Q. You may state as to both of them, or if you have any distinction to make, as to each of them, what that reputation and standing is?

A. That reputation and standing is of the very highest. I will make this distinction between them; making none except that of time; Mr. Sachs and I both studied law at the same office; I think he was ahead of me in the office of Isaac Caldwell, and in that way I knew Mr. Sachs before I knew Mr. Watts, although I knew them both, my relations with Mr. Sachs were closer by reason of that fact, both studying in the same office.

Q. Would the statement of either of these gentlemen be accepted—

Mr. Kealing: Objected to, don't answer that question.

The Court: Confine your question to general reputation.

Mr. Miller: The standing is of the highest?

A. Yes, I said the standing was of the highest. There would be no distinction between the two gentlemen except as to time.

Witness excused.

Thomas R. Gordon, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questioned By Mr. Miller.

Q. What is your name, please?

A. Thomas R. Gordon.

Q. Where do you live?

A. I live in Louisville.

Q. How long have you lived there?

A. Thirteen years and a few months.

Q. What is your profession?

A. I am a lawyer.

Q. Are you now upon the bench?

A. Yes, sir; recently gone upon the bench.

Q. Had you been practicing at the bar before you went upon the bench?

A. Yes, sir; since March, 1890.

Q. Of what court are you now the judge?

A. I am judge of the Jefferson Circuit Court, Common Pleas Branch, Second Division of the Court.

Q. Are you acquainted with W. W. Watts and David A. Sachs?

A. I have been personally acquainted with both of those gentlemen since I went to the Louisville bar, as I say, since March, 1890. I was acquainted with them as lawyers while I yet practiced in the country; I have known them intimately, personally and professionally since I went to the Louisville bar.

Q. Are you acquainted with the reputation of each of them personally and at the bar as to their integrity, fair dealing and veracity?

A. I am.

Q. Will you be good enough to state to the court what that reputation is as to each of them?

A. I don't think there is any lawyer at our bar, and I weigh my words when I say that, who stands better personally and professionally than the two gentlemen whose names you mention. They belong to that class of lawyers that I am glad to say is not a small class at our bar whose word may be taken unreservedly and whose professional character and whose professional conduct is not only unquestioned, but in my judgment is unquestionable.

Witness excused.

Upton W. Muir, a witness called on behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY MR. MILLER.

Q. Will you be good enough to state your name to the court?

A. My name is Upton W. Muir.

Q. Where do you live?

A. Louisville, Kentucky.

Q. How long have you lived there?

A. I have lived there all of my life.

Q. You are thirty-five or forty years old?

A. About thirty-nine, sir.

Q. What is your profession?

A. I am a lawyer, and at present judge of one of the divisions of the common pleas branch of the Jefferson circuit court.

Q. How long have you been judge?

A. I was appointed by Governor Beckham last March and served until the first of January, and am now serving under election by the people of last November.

Q. Are you acquainted with David A. Sachs and William W. Watts?

A. I know them personally, intimately and well, and have known them for fifteen years.

Q. Are you acquainted with the reputation of each of them and his standing in Louisville personally and at the bar as to the matter of integrity, fair dealing and veracity?

A. I am well acquainted with them, and in all of those capacities; I have practiced law with them, and since I have been upon the bench I had them before me acting as lawyers in my court, and I know their character for veracity and standing at the bar, and these gentlemen I know well.

Q. Do you know what their associates think of them?

A. I do, yes sir.

Q. Will you be good enough to tell the court what is the standing and reputation of each of them at the bar, and in that community for veracity, fair dealing and integrity?

A. For veracity, fair dealing and integrity, socially and as lawyers, in the character of practice they engage in they stand as high as any lawyer in that community. Their character in all those respects is unimpeachable.

Q. How many judges of the Court of Common Pleas are there—What circuit courts are there in Louisville engaged in civil business?

A. There are five in civil business, one in criminal; all five are here, of the civil courts, who have just testified.

Cross examination, by Mr. Kealing.

Q. You spoke of the character of the practice they are engaged in. Are they confined to a particular line?

A. No, they are general practitioners; they don't handle any criminal practice; all except that. Their practice extends over the common law and equity practice entirely in both courts.

Witness excused.

The Court: Now, gentlemen, in the first place the character and reputation of a witness is presumed to be good until it is attacked. (To the District Attorney:) Do you expect to attack the general reputation of these witnesses?

Mr. Kealing: No sir.

The Court: Now then as to the proposition that they are men of character and standing in their profession, or as to their professional standing and reputation, do you expect to introduce any witnesses on that question?

Mr. Kealing. No sir.

The Court: It isn't worth while then to introduce any more witnesses on that point.

Mr. Miller: We have but one more witness, on that point, your Honor.

The Court: Very well.

George Durrell, a witness called on behalf of the defendants, being duly sworn testified as follows:

Direct Examination.

Questions by Mr. Miller:

Q. State your name to the court?

A. George Durrell.

Q. Where do you live?

A. Louisville.

Q. How long have you lived there?

A. Since I was seven years old, except when I was away at school.

Q. What is your profession?

A. Lawyer.

Q. How long have you practiced law?

A. Nearly thirty years.

Q. You may state what position you occupy now?

A. None at present; I am just off the bench.

Q. How?

A. I am just off the bench.

Q. What position did you hold? What judgeship?

A. I was Judge of the Court of Appeals of Kentucky from the Louisville District.

Q. How long?

A. For seven years.

Q. You were Assistant United States Attorney there?

A. On two different occasions, under Garfield & Arthur and afterwards under Mr. Harrison.

Q. Will you be good enough to state whether you are acquainted with David A. Sachs and William W. Watts?

A. I have known Mr. Sachs nearly thirty years, and Mr. Watts I suppose between twenty and twenty-five years.

Q. Are you acquainted with their reputation in Louisville and their standing at the bar as men and as lawyers for integrity, fair dealing and veracity?

A. I am.

Q. Will you be good enough to state as to each of them what that reputation and standing is?

A. It is excellent.

Witness excused.

David A. Sachs, called in his own behalf and as a witness on behalf of the defendants, being first duly sworn testified as follows:

DIRECT EXANINATION,

BY MR. SMITH:

Q. Mr. Sachs, you will please give us your name?

A. David A. Sachs.

Q. Where do you reside?

A. At Louisville, Kentucky.

Q. And your profession?

A. Lawyer.

Q. How long have you been engaged in the practice of the law?

A. Nearly thirty-one years.

Q. How long have you been residing at Louisville, or engaged in the practice there?

A. I think I came back to Louisville in '73.

Q. Were you practicing elsewhere than Louisville?

A. Yes sir.

Q. Mr. Sachs, were you in any wise connected or interested in the suit of Ryerson & Son against the M. Zier & Company pending in the Floyd Circuit Court of this State?

A. I was not.

Q. Were you in any way interested directly or indirectly either in that proceeding or in the bankrupt proceeding against said corporation pending now in this Court?

A. I was not.

Q. Did you at any time or have you now any connection or professional employment, or any employment whatever in said causes or either of them in behalf of any one?

A. I have not and never had.

Q. Did you attend the Floyd Circuit Court on February 18, 1903; that was Wednesday of that week?

A. I don't think that the Floyd Circuit Court was in session on February the 18th, 1903. I was before the Judge of the Floyd Circuit Court in chambers.

Q. Did you go from Louisville to that court on that day before the Judge?

A. I went from Louisville before the Judge on that day?

Q. Who went with you?

A. Mr. W. W. Watts.

Q. Please state to the court the occasion of that visit of yours?

A. Mr. Watts told me by phone, or communicated with me, I don't distinctly recollect how the communication came, that he wished to have me go with him before Judge Utz as his friend and counsel, and asked me to meet him at the station at Seventh Street in Louisville on the afternoon of the 18th at 3 o'clock, which I did; and in going over Mr. Watts explained to me that he appeared before the Judge of this Court, and that he came here I think with a limited appearance, or with some papers from the Floyd Circuit Court, and engaged in an argument before your Honor in this court; that he had promised this court to advise his client to deliver up some property, and he was fearful that Judge Utz might not take well to it, or agree to it, or acquiesce in what he had done, and I went there as his friend—and to expunge some records I believe is the word that he used from the Floyd Circuit Court that had been on file there: that he was required to do or promised to do by this Court.

By the Court:

Q. Had what?

A. That he had promised this court.

Q. Did he tell you that he had promised this court to do that?

A. Yes sir.

By Mr. Smith:

Q. Mr. Sachs did you go as the attorney, as the employed attorney or in the expectation of receiving any compensation whatever for the services you rendered your friend, Mr. Watts.

A. I did not.

Q. How long had you known Mr. Watts?

A. Twenty years I guess.

Q. Had you known him well?

A. Yes.

Q. For twenty years?

A. Yes sir.

Q. He was a member of the same bar?

A. Yes sir.

Q. What time of day was it that you went to New Albany?

A. Left Louisville at three o'clock, or about that time; of course these little incidents I cannot exactly remember, but it was late in the afternoon, I think in the neighborhood of three o'clock, or half past three.

Q. And how long does it take you to make the trip from Louisville to New Albany, or about how long?

A. About forty-five minutes.

Q. Where did you go when you arrived at New Albany?

A. To Judge Utz's chambers.

Q. Did you go directly from the depot to Judge Utz's chambers?

A. That is my best recollection.

Q. Just you and Mr. Watts.

A. Yes sir.

Q. Who did you find in his chambers at the time you got there?

A. Nobody but Judge Utz.

Q. Well state to the court what took place between you?

A. Well as near as I can recollect we came in there, and Mr. Watts explained substantially what I have just related that had taken place at the court here. Judge Utz became very much enraged—

By the Court:

Q. Very much what?

A. Enraged, and said in so many words that he would not live up to the promise; that Mr. Watts had no right to make such promise; I saw there was very little chance for me to say anything to him, so I perhaps said very little on the subject.

By Mr. Smith:

Q. Were you there in any other capacity except as you have stated, the representative of your friend and brother attorney, Mr. Watts?

A. No sir, at no time.

Q. Where did you go—How long did you remain at Judge Utz's office?

A. Oh not a very long time; perhaps a half hour; it was late when we got over there.

Q. Who left there with you?

A. Mr. Watts.

Q. Where did you then go?

A. As we went out of there, Judge Utz said to us,—I suppose it was directly to both of us, "Notify the attorneys in this case, go by Mr. Kelso's office and notify the attorneys, or words to that effect, to appear here, all of the attorneys in this case, to-morrow morning at nine o'clock." We left there.

Q. Just let me interrupt you a moment. Did he state for what purpose he wanted them there the next morning at nine o'clock?

A. He did not. He didn't state what he wanted them to be there for.

Q. Had he determined or made disposition in any way of any matters on the afternoon of Wednesday that you and Mr. Watts were there?

A. He had not.

Q. Now you may continue your answer.

A. I have an impression that we went by Mr. Jewett's office, and I think Mr. Watts notified him, and from there we started toward the station, or where you take the car; I will say frankly to you I am not familiar with New Albany,—and on the way we stopped at Mr. Kelso's office. Mr. Watts introduced me to Mr. Kelso, and I simply delivered the message that Mr.—Judge Utz had asked me to deliver, to tell all of the lawyers to be there and asked Mr. Kelso to notify the lawyers. Mr. Kelso made the remark that he wasn't on good terms, I believe with Mr. Stotenberg, Stotsenberg, something of that kind, Stotsenberg I believe it is; I said, "Well, it is with you; that is what the Judge said, to notify all the lawyers to be there in the morning." Then I came home.

Q. How long were you in Mr. Kelso's office Mr. Sachs?

A. Not long enough to sit down; standing up we delivered the message, and walked down; Mr. Kelso walked down, and that Stotsenberg incident, I think happened right on the sidewalk.

Q. Going back to the time you were at Judge Utz's office, was there anything said at that meeting between you, Judge Utz and Mr. Watts in regard to the resignation of the New Albany Trust Company as receiver, or its removal from that position, or in regard to the appointment of any other receiver, in its stead?

A. No.

Q. Anything of the sort mentioned?

A. No.

Q. At the time that you got to Kelso's, arrived at Mr. Kelso's office, was there anything said by him to you about having received a telephone to the effect that you were on your way there?

A. I don't remember it.

Q. You don't remember that?

A. No I do not.

Q. At Mr. Kelso's office on the occasion mentioned, was there anything said about the resignation of the New Albany Trust Company as receiver of M. Zier & Company, or was

there anything said in regard to the appointment of any other receiver in its stead?

A. When was that?

Q. That was at the time that you and Mr. Watts delivered the message there to Mr. Kelso at his office?

A. There was nothing said except that I delivered the message—

The Court: The question is was there anything said on that subject? Answer yes or no.

The Witness: Will you read the question please?

(The question was read by the stenographer.)

A. No.

Q. Was there anything said there at that time about the appointment of Mr. Kelso or his accepting the receivership in the stead of the New Albany Trust Company?

A. No.

Q. Was there anything said about his accepting it provided you or Mr. Watts or both of you would indemnify him, or make him safe in the expenses?

A. Absolutely no.

Q. Where did you go from Mr. Kelso's office?

A. Thursday evening?

Q. No Wednesday; we are on Wednesday yet.

A. I went home.

Q. What time did you get to Louisville, do you remember?

A. No it was dark; I don't remember the time; I suppose in the neighborhood of six o'clock, perhaps a little after or a little before.

Q. Did you and Mr. Watts separate when you got to Louisville?

A. Yes sir.

Q. At what point, do you remember?

The Court: Why take up so much time with that Mr. Smith? They certainly didn't do anything in Louisville on Wednesday night.

Q. Now on Thursday, Mr. Sachs, did you return to New Albany?

A. Yes, under the direction of Judge Utz I went back there with Mr. Watts as his attorney and friend, as I was directed to come back.

Q. What time did you arrive at New Albany the next day?

A. About ten o'clock.

Q. This is on Thursday, the 19th. Now on your arrival there where did you first go?

A. To Judge Utz's chambers.

Q. Did you find any one there; if so, who?

A. Found Mr. Kelso there.

Q. Was the Judge there?

A. Yes sir.

Q. Any one else?

A. No sir.

Q. Mr. Watts went with you?

A. Yes sir.

Q. State what took place there upon your arrival.

A. On Thursday I waited there with Judge Utz and Mr. Kelso for sometime for the attorneys that were expected to be there that morning. The message came that Mr. Hester—I believe that is one of the attorneys in the case—and Mr. Stotsenberg were out of New Albany and were at Jeffersonville. There was nothing done with reference to the striking out of that record, or the expunging of that record, or with reference to—

The Court: Well, tell what did take place: I don't care to know what did not take place.

A. (Continuing) Well on that Thursday morning Judge Utz seemed to be—Judge Utz was—wouldn't listen to any further argument from me with reference to the expunging the record, and while I was talking to him he was still insisting upon holding on to the property. About that time Mr. Jewett, the younger Mr. Jewett came in, and he waited there a few moments and he then went out. The older Mr. Jewett, I believe they call him Col. Jewett, came in and spoke to the Judge with reference to the delivery of the property and what had taken place up here. He then went out. Mr. Kelso was sitting at the table. I said to him that I expect, Judge, that that property has been turned over, and Mr. Kelso said, "Well, I will find out," and he lifted the 'phone and then he said that the property had been turned over.

By the Court:

Q. To the Receiver of this Court?

A. Yes, well he didn't say that; he said the property had been turned over.

Q. Did you understand that was what was meant?

A. I understood just what he said, that the property had been turned over.

Q. I asked you did you understand at that time that it was turned over to the Receiver of this Court.

A. I didn't know that there was a Receiver of this Court. I wasn't familiar with the record.

Q. Answer the question. Read it to him.

The stenographer read the preceding questions.

A. I am frank to say that I did not know that there was a Receiver appointed.

Q. I didn't ask you whether you knew about it. You answer that question or there will be trouble. If you didn't understand it you can say so, if you did you can say so. Read that question once more.

(The stenographer read the question as follows:) "Did you understand at that time that it was turned over to the Receiver of this Court?"

A. Yes sir.

By Mr. Smith:

Q. That was after Mr. Jewett had gone out that Mr. Kelso gave you this information?

A. Yes.

Q. Now Mr. Sachs prior to the time that Col. Jewett came in, you say that you and Judge Utz had been discussing the matter in regard to this property. What discussion had taken place between you?

A. Well, Judge Utz was insisting on holding on to the property and preventing, or rather not acquiescing in the promise that Mr. Watts had made to this Court to deliver it, and I told Judge Utz that I thought he ought to permit Mr. Watts at least to put upon the record, or put himself in such shape, and deliver the property to the Court. The discussion ended, was broken into when Mr. Jewett came in and that prompted me to say, to ask if the property had been delivered as Col. Jewett went out. I said to Judge Utz, I said, "Judge, that firmly settles it, if the property has been delivered you ought now to release Mr. Watts." He still was persistent and said no he hadn't made up his mind to do that.

Q. Was there anything said upon this day as to the resignation of the Trust Company or the appointment of any receiver in its stead.

A. On Thursday?

Q. Yes.

A. Not that I now remember.

Q. How long did you remain in the office Thursday morning?

A. About an hour or an hour and a half.

Q. Did anything else occur that you remember in regard to this matter?

A. No sir.

Q. Mr. Sachs, on that morning or any time during the day was there anything said to you or in your hearing by either Mr. Kelso or Judge Utz about you or Mr. Watts or both of you agreeing to stand for the cost and expense that the prosecution of this matter might bring about?

A. No sir.

Q. That is, I mean the prosecution of it by any Receiver that might be appointed?

A. No sir.

Q. Where did you go when you left the office, Mr. Sachs, on that morning?

A. I went to Louisville.

Q. What time did you go home Thursday?

A. At noon.

Q. At noon; you and Mr. Watts returned together on Thursday?

A. Yes sir.

Q. Were you back in New Albany at any other time, Mr. Sachs, if so, tell when next?

A. Yes I was back there on Friday the next day.

Q. How come you to make a return trip there on Friday?

A. I received a telephone message from Judge Utz to come back there.

Q. When did you receive that message?

A. Thursday afternoon at my office.

Q. What was the purport of the message?

A. The purport of the message was to come back there and bring Mr. Watts back.

Q. Well did you notify Mr. Watts of the fact? Did you go dack with Mr. Watts?

A. Yes, I went back with Mr. Watts the next morning.

Q. What time did you get into New Albany on Friday?

A. Friday?

Q. Yes.

A. About ten o'clock.

Q. Where did you go from the train when you arrived at New Albany?

A. Judge Utz' chambers.

Q. You went directly to Judge Utz' chambers?

A. Yes sir.

Q. Who went with you?

A. Mr. Watts.

Q. Who did you find if anyone there at the time you arrived?

A. Mr. Kelso.

Q. Where was Judge Utz, do you know?

A. He was there.

Q. Then you found Mr. Kelso and Judge Utz?

A. Yes sir.

Q. Were they all that you found in the chambers there at the time?

A. That is all.

Q. Then you didn't go directly from the train to Mr. Kelso's office?

A. No sir; I did not.

Q. At Judge Utz' office what took place after your arrival,—that is, on Friday?

A. Well, I began with Judge Utz about the same subject, that I would like to be heard on expunging that record for Mr. Watts and help carry out his promise. The Judge was in no better humor than he had been with reference to that property; insisted on holding on to it; he said that the Receiver of this Court—that he had been looking into the question and that the Receiver of this Court had made himself a party to his court and that under some Indiana statute he had a right to hold on to that property. I said to him, "I don't know anything about your Indiana Statutes; that property has been delivered.

By the Court:

Q. Delivered to whom?

A. I didn't say in that conversation as to whom it was delivered. I simply said it had been delivered. I will say frankly to you that it had been delivered to some representative of your Court; that was in my mind; "but as the property had been delivered I am of the opinion that you had better never touch that property; if you do, you will find something that you have never seen before; you would just as well get ready with your soldiers, or your State Militia," or words to that effect; and to which he responded, "I haven't got any malitia but I have got a good sheriff and a good posse that will take that property and keep it." And I again expostulated with him and said, "I am of the opinion the best thing for you to do is to let the property alone that has been delivered." He said, "I have made up my mind to remove the Receiver that went into the District Court and promised or agreed"—I don't know the word that he used—"to deliver up that property and appoint another Receiver." Well, I am sure it was Mr. Kelso then that opened up the statute and looked at it and undertook to direct my attention to it. I told him that "I don't care anything about his Indiana Statute; I couldn't base any opinion on them and that I was there but for the one purpose to help Mr. Watts to do what he had promised." Then I gave it as my opinion to Judge Utz that if he had made up his mind to remove his Receiver the better plan to pursue, or the better procedure to pursue, would be to let his Receiver come into this Court and make himself a party to this Court by inter-pleading, setting up all the facts from the incipiency, from the beginning, when Mr. Watts and the New Albany Trust Company appeared before you, and submit to your jurisdiction and get a determination here. That would be the better mode of procedure. He turned to Mr. Kelso and he said, "You bring notice, official notice to the Court, of the fact, of the facts of the delivery of this plant"—I think that had

been delivered in the meantime—"and I will remove the Receiver and will appoint you."

Q. Now, Mr. Sachs, after that statement did you continue there or what took place next? Just go on and state it as it was.

A. That was up to the noon hour. Mr. Utz, Judge Utz turned to Mr. Kelso and he said to him, go and prepare such a statement—I supposed he had reference to the statement bringing to the Court's knowledge the facts—and I will remove the present Receiver and appoint you.

Q. Did you gentlemen go to lunch then?

A. Then Mr. Kelso asked me to go by his office and wait for him and he was not going home to dinner and he would go and get some oysters, take me to some place where we could get some oysters; I then went to Mr. Kelso's office.

Q. What took place at his office, Mr. Sachs?

A. At Mr. Kelso's office he went into the front room and dictated some paper and came back. It was a long room and I was sitting in the back room reading the paper; and he came back there and he said, "Mr. Sachs, I wish you would sign this statement for me bringing these facts to the Court's notice;" why, I said—which were substantially, I believe, I didn't read it very carefully, in the line with what I have said—I said, "Mr. Kelso, I represent neither party nor privy in this thing; I have no interest in it one way or the other." "Well, he said, I can fix that. I have got any number of creditors. You can take any creditor." He then walked to the front part of the house and he destroyed that paper; then brought to me a second paper that I signed, believing that what in my opinion was the course of procedure to follow, would be followed, that is to file an interpleader in this Court setting up all those facts.

Q. Did Mr. Kelso assign any reason why he wanted you to sign that paper?

A. Oh yes; he said that as the Court had signified its willingness to appoint him as receiver, he either could not, or felt a delicacy in signing it.

Q. Was there anything said about whether or not he was disqualified under the Statute to become Receiver provided he was attorney of record, or anything of that kind?

A. I don't think—I don't remember that he said that he was disqualified under the statute, but he didn't like to appear as having one Receiver removed and having another appointed.

By the Court:

Q. Now, the paper that you signed at that time is the petition that appears in this record and which was read here yesterday upon which Judge Utz removed the New Albany Trust Company and appointed Mr. Kelso as Receiver?

A. Yes sir.

Q. And you signed that as the attorney of whom?

A. I don't know, if you honor please, because I haven't got the paper before me and I haven't it in mind.

Q. Could you refresh your recollection by looking at the copy of the petition?

A. How I signed it?

Q. Or for whom you were signing that paper?

A. (After the witness had looked at a paper in the certified record of proceedings of the Floyd Circuit Court) United States Tube Company. It just happened exactly as I told it to you.

Q. Now you signed that petition requesting Judge Utz to remove the New Albany Trust Company and appoint Kelso as Receiver in its stead?

A. Yes sir.

Q. And the last thing that Judge Utz had said to you upon the proposition was that he would find some way to take that property?

A. Yes sir.

Q. You have so testified haven't you?

A. Yes sir.

The Court. Proceed.

By Mr. Smith:

Q. In that petition that his honor states to you, the petition that asks for the removal of the Trust Company and the appointment of Kelso, is there anything said about Kelso in that petition?

Mr. Kealing: The petition shows for itself.

A. Well, if your Honor please, I don't know that that was the petition that the Court acted on or not; I never saw it afterward.

By the Court:

Q. Do you want to qualify your statement of that awhile ago?

A. What was the statement?

The Court: Mr. Stenographer read the question and answer to the witness.

A preceding question and answer was read by the stenographer as follows: "By the Court. *Q.* Now the paper that you signed at that time is the petition that appears in this record and which was read here yesterday upon which Judge Utz removed the New Albany Trust Company and appointed Mr. Kelso as Receiver. *Answer.* Yes sir."

The witness: I don't know, your Honor; I don't know whether that petition was ever filed; I don't know what ever became of it; I never saw it after that moment.

By Mr. Smith:

Q. Did you know what order was made upon that petition at that time, Mr. Sachs?

A. I did not; I did not.

Q. What did you do with the petition after you had signed and sworn to it?

A. Left it with Mr. Kelso.

Q. Did you prepare any order or have anything to do with the preparation of any order upon that petition?

A. I did not.

Q. Did you ever until after these proceedings in this court were instituted against you, that is the citation, know what order had been taken upon that petition?

A. I did not, and I will say further that I believed that when that petition was signed that the intention was that it be carried out just exactly as I have given my opinion that it should be; that the new receiver would appear here in this court and set up all the facts by interpleader and have the question determined.

By the court:

Q. By this court?

A. Yes sir; by your court.

By Mr. Smith:

Q. Judge Utz had told you before that, I believe you say, that he was going to remove the receiver and had directed Mr. Kelso to prepare an order and that he would appoint him?

A. He did. He had determined upon that.

Q. Did any conversation occur between you and Mr. Kelso on that occasion in his office in regard to the taking or retaking of this property from the Federal Court Receiver?

A. No sir, I was certain as I—

The Court: You have answered the question; it is unnecessary to add anything.

Q. Was there any conversation in there in regard to you or Mr. Watts or any of you, either one of you, assuming any liability, or agreeing to assume any liability, provided Mr. Kelso accepted the Receivership tendered to him by Judge Utz?

A. No sir.

Q. Why did you sign that petition?

A. I signed that petition because the principal part of the property—all of the property except perhaps a few hundred dollars had been turned over to the Receiver of this Court and I thought that it would be the best way to extricate Mr. Watts from the position of being in trouble in both courts, and by this means I could then, or they could then come and file their interpleader here, and it would only be a delay of perhaps three hours' ride, or the ride to come here and file

the bill, and instead of taking the assets from the Court it would bring the assets here; it would then relieve Mr. Watts from the embarrassing position that he was in. That was my whole and sole object in the thing.

Q. From your conversation with Judge Utz at the time that he instructed the petition to be prepared by Mr. Kelso, did you believe that that course was going to be pursued?

A. I did.

Q. You say you didn't file the petition yourself?

A. I did not.

Mr. Kealing: He has been over that two or three times.

Q. Did Mr. Kelso ever say anything to you at any time, at that time or any other time, did Mr. Kelso ever say anything to you about turning over to you his claims and appointing you as his attorney as Receiver?

A. He did not. You mean to represent those claims?

Q. Yes, I ask this question to find out as to the representation of those claims.

A. He did not. Never.

Q. Did he at any time ask you to act in the capacity of attorney for him as Receiver in said suit.

A. Coming from—

The Court: Answer the question. Read the question to him.

The question was read.

A. Yes; and I refused.

Q. When and where was that and state what took place.

A. The morning that Judge Utz—Friday morning that Judge Utz had said that he was going to remove his Receiver and appoint Mr. Kelso, coming from Judge Utz's office Mr. Kelso said that Judge Utz had told him, after considering numerous other attorneys, mentioning their names—while I may know them by reputation I didn't know them personally—that he wanted Mr. Kelso to employ me. I told Mr. Mr. Kelso I was over there but for one express purpose, which was to try to extricate Mr. Watts and that I didn't want any employment, that he had a good local bar and there was good lawyers at Indianapolis. He said, "well, I don't know that I need any lawyer; this is a statutory proceeding and I am familiar with the laws of Indiana and I can run it myself."

Q. Did Mr. Kelso at the time he drew—at the time you signed this petition of which you have just been speaking, turn over any claim, either the Tube Company's claim or any other claim to you?

A. He did not. I never represented a party or privy.

Q. Was there any agreement of fee, or any payment of a retainer on a fee, either in these matters or in any matter for the Receivership?

A. No sir; never was promised a fee, asked a fee or accepted one.

Q. Did you ever give any advice to Mr. Kelso as to the Receivership at all?

A. Never.

Q. Mr. Sachs I find by the transcript filed as an exhibit to the response of Mr. Watts in this matter that as of date February the 14th there is an order said to have been entered upon some proceeding that Mr. Watts had instituted on that date asking for advice of the Court in regard to the presentation, or the permission to present certain matters involved to this Court, and at the conclusion of that order I find the following appears: "And now comes C. D. Kelso and asks leave of the Court to withdraw as the Attorney of Record for the following named parties, United Gas & Electric Company; United States Tube Company; Indiana Water Company; Simon David; and the Court now permits said C. D. Kelso to withdraw therefrom." Did you ever advise Mr. Kelso to withdraw as attorney for those parties?

A. I did not.

Q. Did you know that such an order had been made?

A. I did not.

Q. Did you ever advise the making of such an order or that it be inserted in the record although made as of date the 20th, that it be inserted in the record that was made on the day of the 14th?

A. I did not. Never heard of it until night before last.

Q. Did you at any time upon that day or at any other time say that you were a great man for records?

A. I did not.

Q. And that it could be inserted in the record while the Court was in session and could be put in that day's business.

A. I did not.

Q. You knew nothing of it then at all?

A. I did not. I didn't know a thing about it; never heard of it until night before last.

Q. Now we have proceeded on that Friday at noon to Mr. Kelso's office and you had told in regard to the preparation of the paper and your signing it. What took place after that?

A. I went with Mr. Kelso to get the oysters.

Q. To what place did you go, do you know?

A. No sir; I don't know.

Q. Did you find any of your friends there when you arrived?

A. Mr. Watts was there.

Q. Was there any understanding or agreement that he should meet you all there?

A. No sir.

Q. None that you remember?

A. No sir. Well I don't know; I was going to say, New Albany being a small place perhaps he was there and I don't know—I could only say I had no appointment or arrangement with him.

Q. You had not been at New Albany frequently before that?

A. No, I had not been to New Albany but once before that and that was I guess ten or fifteen years ago in a transaction with Judge Dowling.

Q. You hadn't had any practice in New Albany?

A. Oh not at all.

Q. Now at the time that you went to lunch there, you had lunch I suppose?

A. Yes, sir.

Q. How long did you remain there do you remember?

A. Well it was late and I guess it took us up to two or half past two I don't remember exactly.

Q. Where did you go to from the lunch room?

A. To Judge Utz's room, Judge Utz's chambers.

Q. The same place? His private chambers where you had been in the morning?

A. Yes, sir.

Q. Who was there when you arrived?

A. Judge Utz I think.

Q. Well who constituted your party then in the room, in the chambers there? Who constituted the party? Who made it up?

A. Judge Utz and Mr. Kelso; there may have been some others in there but I really can't remember.

Q. Do you remember whether or not Mr. Watts was there?

A. Well he came in very shortly after.

Q. He came in very shortly after?

A. Yes, sir; if he wasn't there.

Q. Did any one else come in during the afternoon?

A. Yes sir my younger brother, J. G. came in.

Q. The one that is called Joe?

A. Yes sir.

Q. He came in in the afternoon?

A. Yes sir.

Q. Do you remember about what hour of the day was that he came in?

A. I guess it was close on to 3 o'clock; that was about the time.

Q. Now state what took place in that room that afternoon, Mr. Sachs, as near as you can remember.

A. I don't know that I can go into detail but I can try to give you the result; it was that the Receiver—No, I think—yes, that Judge Utz told Mr. Kelso to prepare an order removing the Trustee and appointing himself and to prepare the bond; that was about the substance of it.

Q. Was there any discussion as to the bond and its cost etc.?

A. Yes, there was a discussion as to the bond and Judge Utz fixed the bond. I didn't pay much attention to it but Mr. Kelso made the remark that it would be an expensive thing to have a large bond. Utz, Judge Utz said that that wouldn't make any difference, it would come out of the costs anyhow, general costs; something or some words to that effect.

Q. Were those orders prepared according to Judge Utz's instructions or do you know.

A. Why, I don't know. Mr. Kelso and Mr. Utz and Mr. Watts and my brother left the chambers; left there.

Q. They left there about that time?

A. Yes sir; after that.

Q. You know where they went of your own knowledge?

A. No, I don't know where they went of my own knowledge.

Q. Where did you go?

A. I remained in the chambers; I had a headache.

Q. What was their occasion of leaving there; do you know why?

A. Why, Judge Utz had told Mr. Kelso to prepare his order removing the trustee for dereliction, or opposing of his authority, or whatever he might choose to call it, and appoint himself, and he went in order to prepare his order, I assumed, and Judge Utz and Mr. Watts went on the invitation of my brother who also invited me but I said I had a headache and remained in the court room.

Q. To go out for refreshments?

A. Yes sir.

Q. That was the time?

A. That was the invitation of course.

Q. And did Mr. Kelso go out with them?

A. He went out with them, yes sir.

Q. You remained in the office there?

A. I did.

Q. Was the invitation extended to you?

A. Yes sir, but I said I had a headache and remained back.

Q. You had a headache?

A. Yes sir, I suffer with vertigo more or less.

Q. You remained in the office and how long did you stay there?

A. Oh, I tilted the chair against the wall—

The Court: The question is how long you stayed there.

A. I can't tell.

By the Court:

Q. How long were you there?

A. Oh, perhaps an hour; in the course of an hour; somewhere in that neighborhood.

By Mr. Smith.

Q. Then where did you go?

A. Then I went out on the street.

Q. Did anyone else come back while you were there?

A. No sir; no, there was nobody came back there, that is not while I was there. I went out to see what became of my brother and Mr. Watts. I didn't find them and I walked around awhile and walked back to the Court House to see if they went around to the Court House and coming out I saw Mr. Watts coming up with some gentleman I didn't know; I asked where my brother was, he said he had just taken that car.

Q. What time was that?

A. I guess it was close to six o'clock; somewhere in that neighborhood.

Q. Taking a car for home?

A. Yes.

Q. What occured then? Go on then and tell what occurred.

A. I went home.

Q. What occurred with you then?

A. I went home.

Q. You went home with Mr. Watts?

A. Yes sir.

Q. Did you see Mr. Kelso any more after he left there?

A. Well, I saw him; he passed us as we crossed the street to take the street car.

Q. When you were leaving New Albany?

A. Yes sir.

Q. Did you see Judge Utz any more that afternoon?

A. No, I don't think I saw him any more.

Q. You and Mr. Watts saw Mr. Kelso when you were crossing the street to go home? About what hour was that Mr. Sachs?

A. In the neighborhood of 6 o'clock.

Q. You don't know of your own knowledge exactly when your brother left?

A. No I do not; I didn't watch the time.

Q. Did you know at that time when you left there that it was the intention of Mr. Kelso or anybody else to give notice to the Receiver and make demand of him for the property that he had in his possession?

A. I did not.

Q. Did you know that any proceedings were contemplated or in course of preparation, or prepared with a view of retaking that property from the Receiver of this Court?

A. I did not.

Q. Did you advise aid or assist in any way any such procedure?

A. I did not. I gave it as my opinion in the morning of that day not to attempt anything of the kind.

Q. Did you believe that any such proceedings were intended to be instituted or followed?

A. On the contrary I never believed that such proceedings would ever be undertaken.

Q. Well you at that time came home on Friday afternoon?

A. Yes sir.

Q. When were you next back at New Albany?

A. Saturday in the afternoon.

Q. What was the occasion of your visit on Saturday and who accompanied you, if anyone?

A. Mr. Watts went over with me. It was to respond to the process issued against Mr. Watts in the meantime.

Q. Do you remember when that contempt process was issued?

A. No; I really do not remember. I suppose the record will show.

Q. Was Mr. Watts cited to appear?

A. Yes sir.

Q. For what day?

A. For Saturday.

Q. And that was the occasion of your visit over there on Saturday?

A. Yes sir.

Q. What was done with that matter?

A. Respited until the following week.

Q. Some day the next week?

A. Yes sir.

Q. Where did you go when you got over to New Albany on that visit?

A. I am not sure whether I stopped to get some lunch or went directly to Judge Utz's office. That is where I went, I do not remember the direct course.

Q. Do you remember how long you were at Judge Utz's office?

A. A very short time it seemed to me.

Q. Who was at Judge Utz's office at the time?

A. I do not remember anybody but Judge Utz.

Q. Where was Mr. Watts?

A. He was with me, of course, we were together.

Q. Where did you go from there?

A. My impression is that I stayed there but a very short time and then came home.

Q. Did you see Mr. Kelso during that time on your visit over there on Saturday?

A. No sir; I have no recollection of seeing him Saturday.

Q. Did you on Saturday or any other time with Mr. Kelso go through the M. Zier & Company plant there at New Albany?

A. No sir; I do not know where it is.

Q. You did not make any such visit?

A. No sir.

Q. When did you next return to New Albany?

A. Sunday.

Q. How came you to make the visit on Sunday?

A. I was telephoned for by Mr. Kelso and Judge Utz, I think. I was telephoned for.

Q. Do you know who it was from?

A. I do not know positively. Perhaps it was Mr. Kelso or Judge Utz or both of them.

Q. What day was it that you received that telephone?

A. Saturday evening—Saturday night.

Q. Do you remember about what time of night it was?

A. About eleven or half past eleven, somewhere in that neighborhood.

Q. What was the occasion of that visit?

A. Citation to appear here had been made.

Q. Citation from this court?

A. Yes sir.

Q. Did they say on whom it had been served?

A. I do not remember whether they said. It included quite a number of people, and myself.

Q. Did they tell you whether it included you and Mr. Watts?

A. Yes sir; they said it included both of us.

Q. Did you go over next morning, that is Sunday morning?

A. Yes sir.

Q. For what purpose did you go?

A. To see that citation.

Q. How long did you remain over?

A. Perhaps an hour or may be not that long.

Q. Whom did you meet?

A. We came up the street and Mr. Watts and I went towards the court house, and Judge Utz and Mr. Kelso came out, and they said there was no fire in there, that they had adjourned to Mr. Kelso's office, and on the way down I walked with Judge Utz, and I told him again that Sunday morning, "If you had acted on my opinion, all this would

have been avoided. Why were you so stubborn"? or words to that effect.

Q. Sunday morning or Monday?

A. Sunday walking from the court house to Mr. Kelso's office.

Q. You came home from there at what time?

A. About noon.

Q. Who was at the meeting Sunday at Mr. Kelso's office after you went from the court house to his office?

A. Some gentleman besides Mr. Kelso Judge Utz and Mr. Watts that I did not know.

Q. The object of your visit then was to examine that citation, and you all talked about the citation?

A. Yes sir.

Q. And the conversation you say you had with Judge Utz was on going from the court house to Mr. Kelso's office?

A. Yes sir.

Q. You say you returned home about noon?

A. Yes sir.

Q. That was Sunday?

A. Yes sir.

Q. Did you go over to New Albany at any other time?

A. I did not.

Q. That ended your trips to New Albany?

A. Yes sir.

Q. With the exception of this Sunday trip, state what the object or purpose was you had in these visits to New Albany Wednesday, Thursday, Friday and Saturday?

A. None on earth except for the purpose of undertaking to get Watts out of the position that he had gotten himself in between the two courts and with a view of conciliating matters and satisfying the court here, by having the receiver there come up here and file his pleading and have the question determined here. That would relieve Watts from the promise he made which had put him in the embarrassing position and would have relieved the situation below? That in my opinion was a better plan to pursue.

Q. Did you ever advise, aid, assist or encourage any other course to be pursued than that?

A. I did not.

Q. Did these parties meet you again, and if so where?

A. Yes sir; they came over to the office on Monday.

Q. Tell us how that meeting occurred and who was there.

A. On Sunday Mr. Watts, as our names were included in the citation, suggested that perhaps we had better get ready to prepare some response, and Mr. Kelso asked if he could come over, and we said "yes." Mr. Keslo came over on Monday morning. However, before he came over he tele-

phoned to the office that he was coming. He said that some order had been promulgated from this court or had come down from this court on Sunday. I told him to bring a copy of that order, and that delayed him I think.

Q. Did he finally come over?

A. He did.

Q. Did he bring a copy of the order?

A. Yes sir.

Q. Do you remember the date of that order?

A. I think it was the 17th.

Q. What was the purport of the order—I don't mean for you to state the contents, but I want you to identify the order.

A. My impression is that the order was an appearance of the New Albany Trust Company as receiver of the Floyd circuit court, by its attorney W. W. Watts, and a voluntary agreement to surrender. Those may not be the exact words. The order will speak for itself; but in substance that is what the order was.

Q. Did you examine that order and read it there?

A. I did.

Q. Who was present when Mr. Kelso first came in and brought the order?

A. I think my brother M. A. Sachs was in the room?

Q. Morris Sachs?

A. Yes sir.

By the Court:

Q. Was that on Sunday?

A. No sir; Monday.

By Mr. Smith:

Q. When you read that order, did you make any statement to Mr. Kelso?

A. Yes; I said to Mr. Kelso that ends it.

Q. What did you mean?

A. Mr. Kelso and Judge Utz were insisting that they would not—it was Judge Utz insisted that he would not carry out the promise that Mr. Watts had made because no order had come down. That had been spoken of there in Mr. Kelso's presence every day.

Q. What time did Mr. Kelso get over to your office on Monday?

A. Ten or half past ten or eleven; he was late.

Q. Did any further conversation occur at the noon hour in regard to the matter except a discussion of the order relating to these transactions, I mean.

A. Oh yes; there was a good deal of talk, I can not remember exactly what was said.

Q. Was there anything said that morning between Mr. Kelso and anyone else in regard to you or Mr. Watts? I am speaking of the morning session.

A. Yes sir.

Q. In regard to you or Mr. Watts assuming any liability or having assumed any liability by reason of Mr. Kelso's accepting the Receivership.

A. Jonny Watts—John B. Watts—asked Mr. Kelso a question.

Q. What was the question.

A. Whether his brother Will had anything to do with retaking the property—W. W. Watts, or violating his promise I do not remember exactly the words. Mr. Kelso responded "No, he had nothing in the world to do with it."

Q. Was any question asked whether or not W. W. Watts had assumed any liability by reason of the taking of the property.

A. I do not hardly think there was.

Q. Read that question.

The question was read.

A. His brother asked him whether he was responsible in any way or had made any promise and Mr. Kelso said no.

Q. Did that end the conversation that morning?

A. Yes sir; I think it did.

Q. Did you all go out to lunch?

A. Yes sir.

Q. Did you take Mr. Kelso to lunch?

A. Yes sir.

Q. Was W. W. Watts there that morning at your office?

A. Yes sir.

Q. And John Watts?

A. Yes sir.

Q. How long did they remain there?

A. Up to the time we adjourned for the noon hour.

Q. What time did they get there, speaking with reference to the time that Mr. Kelso first arrived?

A. Soon after I telephoned for them.

Q. You adjourned: And did you return in the afternoon to your office?

A. Yes sir. In the meantime during the morning sometime, Judge Utz telephoned to know if he could come over and I told him yes.

Q. Did he say when he would come over?

A. About half past two or three I think.

Q. You got back to the office, you and Kelso and Watts did you?

A. Yes sir.

Q. Did Judge Utz come over.

A. Yes sir.

Q. Was John Watts over there too?

A. Yes sir.

Q. State what took place in the afternoon conference—I will ask you first, was Joe Sachs there?

A. Yes sir he came in?

Q. And Morris Sachs, and John Watts and Will— Go on.

A. Some discussion came up about the question of payment of costs in this Court between Judge Utz and Mr. Kelso. Mr. Kelso said that Mr. Watts he thought ought to bear the burden, or some words to that effect. Mr. Watts was not there at that time and I telephoned to Mr. Watts. Mr. Watts came in and I told him of it and he seemed very much astonished, that he had made no obligations to pay the cost and had no interest in the thing was taking no part in the thing and could not imagine where they thought such a thing came from.

Q. That was the costs of defending these citations?

A. That is the way I understood it. Mr. Kelso said it would cost quite a sum of money and he was not able to bear it. Judge Utz said "It won't cost a great deal and I have some money in Court, or in the Receiver's hands," (I don't remember which remark it was) "and you pay all the costs out of that."

Q. Did he claim at that time—Kelso ever claim that you had assumed any liability?

A. No sir.

Q. Did he claim at that time that he thought any of the burden of the expense ought to fall on you?

A. No sir.

Q. He was insisting that Watts ought to bear it and for that reason you telephoned over to Watts to adjust the matter with him.

A. Yes sir: That is what he said.

Q. Did you prepare any response that Monday afternoon?

A. No sir.

Q. Did you proceed with the matter any further than that discussion?

A. No sir; I told him that they were insistently holding that property—that is Judge Utz—because they said there was no order and he was not going to keep that promise. Just as soon as I laid my eye on the order I said, "that ought to settle it;" and I told Mr. Kelso when he showed me the order, "Now, go up and deliver up that property."

Q. By the Court: What did you mean by "ought to settle it?"

A. I was insisting at the promise—

Q. I understand that. You say when you saw this order, you said "that ought to settle it?"

A. Yes sir.

Q. You mean by that that the property belonged to the Receiver of this Court.

A. There is no doubt about that.

Q. That is what you meant?

A. Yes sir. Judge Utz said "there is nothing in that order that don't relieve the situation," or words to that effect.

Q. By Mr. Smith: Now, as I understand you, you were advising the procedure as you have stated it heretofore, but Judge Utz was insisting otherwise?

A. Yes sir; that is it.

Q. Insisting that he ought not to take any procedure or recognize the matter and one reason he was assigning that the order had not been made?

A. Exactly.

Q. And when the order arrived, you thought that relieved the situation?

A. I thought that would end it and he would be satisfied. I was insisting all the time that the moral obligation ought to be carried out.

Q. On that afternoon or at any time during that Monday at your office, was there anything said in regard to whether you or Mr. Watts should attend Court here?

A. Yes sir; that was spoken of.

Q. Give us what was said in regard to that.

A. We had made up our minds—

By the Court: He asked you to tell what was said.

A. Let me see if I cannot give it to you. Mr. Watts said that he was coming and so did I. Judge Utz said, as we have not been cited, he preferred that we did not come.

Q. Is that all that was said?

A. I am trying to think. Minor things that made no impression on the mind are hard to remember. I can not say that is all but I know the result of it was that Judge Utz and Kelso did not want us to come.

Q. By Mr. Smith: Was there anything said by you to the effect or in substance that you would not come, that you could not afford to or would not testify against your friend Watts and that you would go to Jamaica before you would?

A. No sir.

Q. Or that you would go to Texas or California?

A. No sir; I never said anything at all of that character.

Q. You were not served with process in this court that caused your attendance?

A. No sir; it is voluntary.

Q. Did you at any time, or under any circumstances aid, advise, abet or encourage either the taking or the withhold-

ing of this property from Connor, the Receiver of the United States Court?

A. I did not.

Q. Were you ever at any time after you had known of the case, that is Wednesday, you say you first knew of it, knowingly guilty of any contempt of this court?

A. No sir.

Q. Did you at any time knowingly or intentionally violate any order of this court?

A. No sir. I never intended to violate any order of this Court knowingly at all.

Q. Did you ever advise or encouage anyone else to do so?

A. I did not, or any other Court, I might say.

Q. You have said that in the morning John Watts put the question to Kelso in regard to whether his brother W. W. Watts had incurred any responsibility by agreeing to indemnify Kelso in case of his accepting the Receivership or in any other way. Now, I will ask you whether or not John R. Watts put a question in substance the same to Judge Utz in the afternoon?

A. Yes sir; and he answered no and told him he did not have anything to do with it.

Q. Was anything said about either one of them giving an affidavit that W. W. Watts could use up here in court?

A. John Watts asked that and they said said they would give him the affidavit.

Q. There was no question of that kind as to you?

A. No sir.

Q. Nothing said about your being responsible?

A. No sir.

Q. I will ask you if at any time you ever prepared or assisted in the preparation of any order or pleading or paper relating to these transactions for Mr. Kelso except the signing of the paper you have heretofore spoken of?

A. I did not.

Q. Did he ever submit for your opinion, investigation or inspection any paper prepared for him relative to this transaction except the paper that you have mentioned?

A. He did not and I do not know that he went thoroughly over that one.

Examined by Mr. Fairleigh:

Q. You have stated to the Court that you went to New Albany, and whatever you did in these transactions, all of them, was for the sole purpose, as I understand you to say, of aiding Mr. Watts in accomplishing the purpose of his statement to this Court on the 17th.

A. That was my sole purpose.

Q. Was there any ulterior purpose—any purpose beyond that at that time or any ulterior purpose after that?

A. None whatever.

Q. Was there any agreement, understanding or intention on your part or on Mr. Watts' part, that anything else than that should be done by you?

A. No sir.

Q. Did you do anything else than that?

A. I did not and all that I did was tending towards that end.

Cross examined by Mr. Kealing:

Q. Who composed your firm?

A. M. A. Sachs, myself, and my younger brother J. G. Sachs.

Q. Did you or your firm represent any creditor in this M. Zier & Co. proceeding?

A. I will have to answer in this way:

Q. Just answer yes or no?

A. I do not know because my younger brother—

Q. Did you?

A. No sir.

Q. Prior to the time of your conversation with Mr. Watts when he asked you to go over to New Albany to help him, did you know anything of the condition of the M. Zier & Co. suit?

A. No sir.

Q. Nothing at all?

A. Absolutely nothing?

Q. Did you or your firm have any other business in the Floyd Circuit Court prior to that time?

A. Prior to what time?

Q. To the time you went over there to assist Mr. Watts?

A. At any time in my life?

Q. At that time, I will say?

A. Any other business?

Q. Any other business?

A. No sir I did not.

Q. Then anything you or your brother went over on was on this business?

A. I can only answer for myself.

Q. You do not know why your brother went over?

A. Yes sir I do.

Q. Why?

A. He went over representing Walters' Brewery that Mr. Hester can tell about.

Q. I asked you why he went over?

A. I am telling you; they were having some boilers completed over there.

Q. For whom?

A. For the Walters people.

Q. What had that to do with the M. Zier & Co.?

A. I do not know. I expect you had better let my brother explain that.

By the Court: Answer the question.

Q. Don't you know?

A. No sir.

Q. You have not heard from either of your brothers what the business was about,—answer yes or no?

A. Yes sir, I have heard.

Q. What was it about, what did they tell you?

A. They told me that M. Zier and Company had built some boilers or were about to build some boilers for the Walters that Mr. Hester represented, and they had put up some money and he was over there to have it finished.

Q. Walter in a sense was a creditor of M. Zier & Co.?

A. I can not say, I don't know?

Q. Then when Mr. Watts called on you or when you went with him to New Albany on Wednesday afternoon, you knew nothing of the condition of M. Zier and Company?

A. No sir.

Q. What did he tell you on the way over?

A. I have told it in my direct examination.

Q. Tell it again.

A. He told me in substance that he came up here to Indianapolis; that he appeared here with some papers from the Floyd Circuit Court; that some question came up about a telephone message that went over the wire and there seemed to be some misunderstanding, and it seems that some orders were entered in the Floyd Circuit Court that this court thought should not have been entered resulting from the telephone communication. The result of that was that he had promised the court here to advise his clients to deliver the property.

Q. Is that all he told you?

A. That is all I remember.

Q. Did he tell you this court had appointed a receiver for that property?

A. No, not that I remember.

Q. Did you not know when you went over to represent him that this court had appointed a receiver?

A. I may have heard so, I am not sure.

Q. I mean did not Mr. Watts tell you?

A. No sir not that I remember. It was simply—

By the Court: Just answer the question.

Q. Did you know that the receiver had been appointed by the Floyd Circuit Court?

Mr. Miller: It is usual when a witness answers a question directly that then he may make an explanation.

The Court: That is where an explanation is proper. This is a lawyer of thirty-one years' experience and I am going to require him hereafter to answer the questions.

Mr. Miller: Will not Your Honor permit him to explain?

The Court: Whenever I think it is proper I will. There is no explanation needed or necessary there. We may just as well understand now that these evasions and explanations will not be permitted any longer, you must answer the questions.

By Mr. Kealing:

Q. Did you know that a receiver had been appointed by the Floyd Circuit Court for the M. Zier & Co. property?

A. Yes sir.

Q. Did you know or did Mr. Watts tell you that there was a clash of jurisdiction between the two courts at that time?

A. No sir.

Q. When he told you that he had promised to advise that this property should be turned over to whom did you understand he had advised the property to be turned over to?

A. To this Court?

Q. Then did you infer that there was a clash of jurisdiction?

A. I could not gather that. I did not know what there was.

Q. Do you mean to say to this court that without fully knowing the conditions, you went over to represent him before the Judge of the Floyd Circuit Court?

A. I went over—

Q. Just answer that yes or no.

A. No, but I want to explain.

The Court: You may explain that.

A. All I knew was what Mr. Watts had told me.

By Mr. Kealing:

Q. He did not tell you that there was a receiver appointed by the United States Court, and you did not know that, is that correct?

A. I would say no, I don't think I did.

Q. Then when he told you that he had promised to advise that this property be turned over, you did not know to whom it was to be turned over?

A. No I did not.

Q. And yet you were going before the court to save him from the wrath of the Floyd Circuit Court?

A. Yes sir.

Q. That is all you knew when you went to appear before Judge Utz on Wednesday?

A. That is all.

Q. Did you go directly to Judge Utz's office when you reached New Albany?

A. That is my best impression, I do not know of any other place that I went to.

Q. At that time, had you any acquaintance at all with Charles Kelso?

A. No sir.

Q. Was there anything said about Kelso in Judge Utz's office on Wednesday night?

A. Yes sir.

Q. What was said?

A. Judge Utz asked me to go by Kelso's and ask him to come there Thursday morning.

Q. Asked you to go by?

A. Watts and me.

Q. Did he ask you or Watts?

A. It was addressed to both of us and I assumed—

Q. Had you ever met Judge Utz before?

A. Never had.

Q. What was the occasion of using Kelso's name Wednesday night?

A. I do not know.

Q. Did you know that Kelso had anything to do with this?

A. No sir.

Q. Had Watts told you?

A. He had not.

Q. Did you ask the court why he wanted Kelso?

A. No sir.

Q. Did you ask the court why he wanted you to come back?

A. I did not. I want to explain that last question. I assumed that he wanted me to come back with Watts next morning—

Q. I didn't ask you what you assumed, but what he said.

A. He said to go by Kelso's office and tell all the attorneys in the case that I want them here tomorrow morning?

Q. In what case?

A. He did not say what case, but I am giving you his language.

Q. You were introduced to Judge Utz for the first time that evening?

A. Yes sir.

Q. Did he greet you cordially.

A. Just about as angry a man as you could see.

Q. Did he greet you cordially or not?

A. I do not remember the greeting.

Q. He was very much enraged?

A. Soon after Mr. Watts began to talk—

Q. Did he speak to Mr Watts?

A. Oh yes I think he did.

Q. Now just tell us what the court said that night?

A. That evening?

Q. Yes?

A. I said that I had come over there with Mr. Watts as his friend and attorney.

Q. What for—what did you tell the court—I want to know your language as near as I can?

A. That he had been to Indianapolis and I think maybe the judge had known something of it—

Q. Just tell what you said—I don't care what the judge knew or didn't know?

A. I said Mr. Watts had been to Indianapolis and made a promise to turn over that property and I was there for the purpose of aiding him to do that and to expunge from his record certain papers that had been filed?

Q. Did you know when you told the judge that who the property was to be turned over to?

A. No more than I told you turned over to the court.

Q. How could you aid him if you did not know where it was to be turned over or to whom?

A. It was to be turned over to this court.

Q. You knew it was to be turned over to this court?

A. I have repeatedly said that.

Q. You knew this court had appointed a receiver?

A. I did not.

Q. Did you think the property would be turned over to the court itself?

A. I did not know whether it would be turned—over—

Q. As a lawyer did you know what that meant?

A. I knew what that meant.

Q. When Mr. Watts told you he had agreed to advise the turning over of this property to this court, as a lawyer did you know what he meant?

A. Certainly.

Q. Then you knew there was a receiver appointed or an officer to take it?

A. Ah! Certainly I did.

Q. That is what I have been trying to get you to say. Then you did know that there was a clash of jurisdiction as a lawyer?

A. No. I cannot admit that. I did not.

Q. Had you no idea what the trouble was?

A. None more than what Mr. Watts had told me.

Q. But if Mr. Watts did not explain to you fully and you were going to represent him, don't you think he ought to

have explained to you fully so that you would have known how to represent him in court?

A. He explained fully enough to me.

Q. Are you in the habit of going to courts without full information of the cases you try, is that your practice?

A. I think not.

Q. It was in this case?

A. No sir, I think not.

Q. The Wednesday night you went to Mr. Jewett's office I have—

A. I have no recollection of going to Mr. Jewett's office.

Q. Do you know Mr. Fitzpatrick?

A. Yes sir.

Q. Did you meet him and speak to him there?

A. Yes sir.

Q. And he said Hello Sachs?

A. Yes sir.

Q. You do remember that?

A. Yes sir.

Q. Your memory is changed now?

A. Yes sir.

Q. Did you not ask Mr. Watts or Henry Jewett to telephone to Mr. Kelso to remain in his office until you came?

A. I did not.

Q. Did not Mr. Watts?

A. I did not hear him.

Q. I will ask you if in the presence of Mr. Fitzpatrick and Col. Jewett, Henry Jewett did not telephone to Mr. Kelso and ask him to remain in his office until two gentlemen came there?

A. If he did, I do not know it.

Q. The absolute fact is that you have no memory on that subject?

A. I absolutely do not know that Mr. Jewett telephoned to Mr. Kelso.

Q. Why did you go to Mr. Jewett's office?

A. If I went there—

Q. You said you went there: Why did you go there?

A. For the purpose of telling Mr. Jewett that Judge Utz wanted to see all of the lawyers on Thursday.

Q. How did you know that Mr. Jewett was a lawyer in the case?

A. Mr. Watts knew who the lawyers were.

Q. Did he tell you?

A. When I say I individually, I take it that Mr. Watts was with me and he was seeing the lawyers.

Q. You say you went to Mr. Kelso's office that evening?

A. Yes sir.

Q. How long did you remain there?

A. I didn't stay there but a very few minutes, 10 or 15 minutes.

Q. Not over 10 or 15 minutes?

A. No.

Q. Have you told in your original examination all the conversation that occurred there?

A. Yes sir; to the best of my recollection.

Q. I will ask you if it is not true that you went there for the purpose of asking Mr. Kelso to become Receiver?

A. It is not so.

Q. I will ask you if you did not at that time ask him and advise him to become Receiver?

A. I did not.

Q. I will ask you if it was not talked about in the office that night, the question of whether there would be contempt proceedings in this Court and that you advised Mr. Kelso to become Receiver and told him never in your practice had you heard of a man being put in jail for a civil contempt or contempt in civil cases.

A. No sir; I said no such thing.

Q. Did not Mr. Kelso say to you that he would accept the appointment if you gentlemen, meaning you and Watts, would guarantee the costs in the case saying he was a poor man and was unable to fight other peoples' battles?

A. No sir; nothing of the kind was ever said.

Q. Did you not say to Mr. Kelso that night in his office that you thought the Floyd Circuit Court had jurisdiction?

A. I did not.

Q. You agreed, however, to meet next morning, Thursday at 9 o'clock.

A. I was directed to come back.

Q. By whom?

A. By Judge Utz.

Q. He didn't tell you why he wanted all the attorneys?

A. He did not.

Q. You came to New Albany on Thursday morning?

A. Yes sir?

Q. And went to the Court House?

A. Yes sir.

Q. From the Court House did you not go to Mr. Kelso's office?

A. On Thursday?

Q. Yes, you and Mr. Watts.

A. No sir.

Q. When you were there on Thursday, was Mr. Jewett sent for?

A. If he was I can not exactly remember. Mr. Jewett came in and out of there with some figures on one of those dates—

Q. I did not ask you that. Was he sent for Thursday morning?

A. I did not send for him.

Q. Was he sent for by any one to your knowledge?

A. Not to my knowledge.

Q. Who was in Judge Utz's Court room that morning besides yourself and Mr. Watts?

A. Mr. Kelso was there, and if there was any one else I do not remember.

Q. Was Mr. Jewett there?

A. My impression is that the younger Jewett was in and out and then the tall one came.

Q. You yourself had asked Mr. Jewett to come the night before—

A. I, no.

Q. Did you not say you went to his office?

A. Yes sir; but I did not say I asked him to come.

Q. It was Watts?

A. Yes sir.

Q. It was you that asked Mr. Kelso?

A. I don't know whether I did or Watts.

Q. Did you not testify originally that you asked him?

A. If I did it was true.

Q. What do you say now?

A. If I said it it is true.

Q. I want to know what you say now?

A. That is my best recollection.

Q. What did you talk about that morning?

A. Thursday morning.

Q. Yes?

A. I started to ask Judge Utz for a hearing on the question of expunging or striking out the papers that were objectionable—

Q. You wanted to expunge the record?

A. I did not quite get through with my answer please—to expunge the papers from the record and take the orders from the order book and carry out the promise that had been made to this court.

Q. You did not make this engagement with Judge Utz, did you, he ordered you back as an attorney?

A. Yes sir.

Q. When he came back—and you came back—what did he tell you he wanted you to come back for?

A. He didn't say a word.

Q. And without his saying a word you began expunging the record?

A. I did. Now I want to explain that. When I left the evening before—

Q. I don't care about the evening before. I want what occurred that morning.

By Mr. Miller: I think he has a right to explain.

The Court: But his explanations don't explain and when he is asked a single question on what occurred and each time attempts to explain, it gets a little bit monotonous. What is it you want to explain?

A. Simply to explain the court ordered me back I assumed it was for a hearing—

Q. By Mr. Kealing: I didn't ask you what you assumed. He ordered you back. He didn't ask you to come back. When you got back the next morning did he tell you what he wanted you to come for?

By the Court: Answer that question.

A. I don't remember that he did.

Q. But you started on the business you have detailed?

A. Yes sir.

Q. How long did it take for you to make your talk to the Court that morning?

A. I did not get a chance to talk very long before he interrupted me.

Q. How long did you talk is my question?

A. Not over five minutes.

Q. Why did he interrupt you?

A. Because he said he was not going to carry out that promise.

Q. That was about 10 o'clock, was it not?

A. No sir.

Q. What time was it?

A. I don't think we reached there much before 10.

Q. What time did you reach there?

A. I think it was in the neighborhood of 10 o'clock, somewhere in that neighborhood.

Q. If you got through in five minutes why were you there until noon in New Albany?

A. Just waiting for the Judge to give me a hearing.

Q. Did he tell you he would give you a hearing that day?

A. No sir; but he did not say he would not.

Q. You just sat around the court room?

A. Yes sir; there was other business being transacted and he was attending to other business and I thought he would get back to it, and in the meantime Mr. Jewett and the elder Jewett came in. Time passed like I have waited on courts before.

Q. When Mr. Jewett came in nothing was said about the M. Zier & Co. business?

A. Yes sir; the younger Mr. Jewett came in with some figures about this business and the elder Jewett came in

and explained in substance that his brother had been up here and Mr. Watts and had promised the Court—

By Mr. Kealing: I didn't ask you that?

By Mr. Smith: Can't he explain that?

By the Court: The whole answer is not responsive.

By Mr. Smith: I submit that he asked him what else was said.

The question was read by the reporter.

By the Court: Answer that yes or no.

A. Yes sir.

By Mr. Kealing:

Q. Did you take any part in the discussion that morning? Answer that yes or no.

A. No sir.

Q. None whatever?

A. None whatever.

Q. Why did you not go away then?

A. Waiting for a hearing.

Q. Did you get a hearing?

A. I did not.

Q. Did you ask for a hearing?

A. Yes sir.

Q. When?

A. That morning.

Q. After you asked it the first time did you ask it the second time?

A. Yes sir.

Q. At what time?

A. After Mr. Kelso had said that the property was delivered over.

Q. That was after you learned that the property had been delivered over. To whom did you understand?

A. I did not learn to whom.

Q. Did I not understand you to say in response to a question by the Court awhile ago that you learned it was to the Receiver of this Court?

A. Not from Kelso.

Q. From anybody did you learn?

A. I learned from Mr. Watts that the property had been delivered over to some officer of this Court or to the Court.

Q. On that Thursday morning?

A. No sir.

Q. Did you not state awhile ago that you learned on Thursday that this property had been turned over to the Receiver?

A. Yes sir; that is right.

Q. Did you not know who the Receiver was at that time?

A. No sir.

Q. Did you not know his name was Connor?

A. No sir.

Q. You never had heard it?

A. No sir.

Q. Mr. Connor's name was not mentioned in the Court room?

A. No sir. You remember I was a stranger there—

Q. But you were there on law business?

A. No sir.

Q. I thought you were there to represent your friend Watts?

A. Yes sir; but that was hardly law business.

Q. You think these attorneys here are hardly on law business to-day?

A. It is a matter of pleasure to them I assume.

Q. But it is law business. On Thursday about noon, you and Mr. Watts went back to Louisville. You returned to New Albany on Friday morning, did you not?

A. Yes sir.

Q. You were telephoned to come back?

A. Yes sir.

Q. By whom?

A. I do not know who 'phoned.

Q. Did you answer the 'phone; did you talk with the person who asked you to come over?

A. My best recollection is that I did?

Q. Did that party say who it was talking?

A. He did not.

Q. You went over without knowing who wanted you to come over?

A. I knew who wanted me.

Q. How did you know?

A. The party at the 'phone told me.

Q. Told you what?

A. That Judge Utz wanted me to come over.

Q. You didn't ask who the party talking was and did not know who it was?

A. No sir.

Q. But you went over?

A. Yes sir.

Q. Did he tell you at what time to come over?

A. Yes sir.

Q. When?

A. He told me to come over in the morning and bring Mr. Watts.

Q. That was the morning, was it not, that you signed the petition as attorney for the United States Tube Company?

A. Yes sir.

Q. I will ask you if it was not said by Mr. Kelso on the Wednesday meeting that he could not act as receiver because he was attorney of record for some of the creditors and you suggested that he could withdraw and become Receiver?

A. No.

Q. You say this petition that you signed was not written out by you on Friday?

A. No sir.

Q. And you did not read it very carefully, or did you?

A. I don't think I did.

Q. You swore to it?

A. Yes sir.

Q. Are you in the habit of swearing to things that you know little about without reading them carefully?

A. No sir.

Q. Did you in this case?

A. I took it for granted that I read it, I will assume the responsibility. I can't deny that.

Q. By the Court: You say you can't deny it?

A. I say I take it for granted—

Q. Was that what you said? Read that Mr. Reporter.

The answer referred to was read by the reporter.

Q. You knew at that time on Friday morning that the Receiver had been appointed by the United States Court?

A. Yes sir.

Q. You knew what his name was then, did you not?

A. From my personal knowledge, I can not say I did.

Q. You don't know.

A. I did not have any interest in it one way or the other.

Q. I will read you this: "Comes now the United States Tube Company by D. A. Sachs attorney and respectfully represents to the Court that on the 19th day of February 1903, the said New Albany Trust Company as such Receiver of said M. Zier & Co. did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Co. Boiler Plant located at the Northeast corner of Upper 1st or Pearl and Oak Streets, in the city of New Albany, Indiana, to one Fred D. Connor who is acting as Receiver in bankruptcy claiming to have been appointed by the United States District Court of Indiana sitting in bankruptcy." You swore to that?

A. Yes sir.

Q. By the Court: You say you can't deny that; that is because it is a matter of record?

A. No sir.

Q. Do you mean to say you would but for that?

A. No sir. What I meant was that I could not deny that I read that paper.

Q. By Mr. Kealing: When you swore to this did you believe what was in the affidavit.

A. Why certainly I believed it to the best of my knowledge and belief.

Q. Then you believed that this U. S. Court Receiver had no authority to take that property? And was wrongfully withholding it? Because that is what you swore to.

A. Is that what I swore to?

Q. Let me read it.

A. Let me.

The witness here read the paper referred to.

Q. Now I will read it. "Comes now the United States Tube Company by D. A. Sachs attorney and respectfully represents to the Court that on the 19th day of February 1903 the said New Albany Trust Company as such Receiver of said M. Zier & Company did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Company Boiler Plant located at the Northeast corner of Upper First or Pearl and Oak Streets, in the City of New Albany, Indiana, to one Frederick D. Connor, who is acting as Receiver in Bankruptcy, claiming to have been appointed by the U. S. District Court of Indiana." You swore it had been wrongfully turned over?

A. Yes sir.

Q. Was it true when you swore to it?

A. Yes sir; that the New Albany Trust Company wrongfully turned it over.

Q. You believed that when the New Albany Trust Company turned it over, they had wrongfully turned it over?

A. That was my opinion.

Q. Is it your opinion now?

A. It is my opinion that the New Albany Trust Company delivered that property to the Receiver of this Court without some order of the Floyd Circuit Court.

Q. Yes; but when you signed that affidavit you knew that Mr. Watts told you that he as attorney for this Court had agreed to advise that it be turned over?

A. Yes sir.

Q. You knew that the Court had ordered it turned over, did you not?

A. At that time?

Q. At the time when you made that affidavit?

A. No; I did not know that the Court had ordered it to be turned over, but that would not make any difference to me.

Q. Answer the question whether you did or not.

A. No sir.

Question by the Court: You say it would not make any difference to you whether this Court had ordered it turned over or not?

A. I would make Watts carry out his promise whether he had the order or not.

Q. That is what you meant to say a moment ago?

A. Certainly, I would make him carry out his promise whether the order had ever been entered.

Q. By Mr. Kealing: Further in this affidavit you ask that such New Albany Trust Company be cited to appear in chambers before that Court on the 21st of February, which was on Saturday. Tell the Court whether you didn't appear that afternoon in that Court.

A. On Saturday?

Q. Yes.

A. Yes.

Q. And you knew that you had asked that these people be cited to appear at 3 o'clock when you appeared?

A. I did not know a thing about it.

Q. You had signed that affidavit the day before.

A. I had signed it and left it with Mr. Kelso.

Q. You knew what was in the paper?

A. Yes sir.

Q. You did not sign it for fun?

A. No sir.

Q. You knew it was to be filed.

A. No sir.

Q. Do you mean to say that you signed and swore to a paper and left it in his possession and that you did not know it was going to be filed?

A. I did not know it.

Q. Do I understand you to say that to a stranger you had only met and known for twenty-four hours—on his request you made an affidavit of this kind, not knowing what he was going to do with it; do you want the Court to understand it that way?

A. No sir; he was to do just what I had told him to do.

By the Court: That is not the question.

The question was read by the reporter.

A. I did not. I knew what he was going to do with it if he did what I told him.

Q. If you believed and had advised the Receiver of the State Court, to file an intervening petition in here, why was it necessary to get a new Receiver, why could not the New Albany Trust Company file an intervening petition in this Court, why was it necessary to make this affidavit?

A. Judge Utz had repeatedly said he was going to remove the New Albany Trust Company and appoint a new Receiver.

Q. That was because they said they would resign?

A. I don't know. Judge Utz said he was going to remove the old Receiver and appoint another.

Q. Tell the Court if you had no business in New Albany excepting to defend Watts, why was it necessary for you to give them any kind of advice as to what to do in this receivership matter to get mixed up in it?

A. I did not give them any advice.

Q. Did you not say that you advised the filing of an intervening petition in this Court?

A. I gave it as my opinion that that was made to settle the difficulty and it would relieve the situation, to come in with a plea and get the judgment of this court and then if they wanted to proceed further that was with them.

Q. That is the only reason you can give as to why you signed and swore to this affidavit?

A. That is the only reason I give. For that purpose and I thought it would relieve the situation.

Q. I will ask you if it is not true that on that day, almost all day, you were in Mr. Kelso's office helping him to draw this petition and the order which follows?

A. I was not.

Q. I know his stenographer?

A. When I see her, I don't know her.

Q. You remember a stenographer being there?

A. She swore me to the petition.

Q. I will ask you if it is not true that while these other people were at the cafe or saloon drinking you were at Mr. Kelso's office helping to draw these papers, not only the petition, but the order of the court and all papers necessary to take this property and that they were drawn up at that time?

A. I was not there, no sir.

Q. Anticipating that the Receiver would refuse?

A. No sir.

Q. By the Court: What is the name of Mr. Kelso's stenographer?

Mr. Kelso: Bertha L. Scott.

The Court: I want a subpoena issued for her.

Q. By Mr. Kealing: Confine yourself now to this Thursday and tell this court how much time you spent in Mr. Kelso's office on that day?

A. Not over an hour.

Q. Was it an hour continuously?

A. I think it was just during that noon hour.

Q. What were you doing when you were in there for the hour?

A. Reading a paper—it may not have been that long. It was a short time.

Q. Did you dictate any paper to the stenographer on Thursday?

A. I did not.

Q. I will ask you if it is not a fact that you sat in the back and that you and Mr. Kelso, or Mr. Kelso dictated this petition and the order and the other papers and at times you made suggestions as to what to put in the papers?

A. No sir nothing except that petition or some papers he had and I saw it.

Q. By the Court: Ask him whether he dictated or suggested to this stenographer who has been named?

Q. By Mr. Kealing: State whether you dictated it to the stenographer or whether while Mr. Kelso was dictating it or any part of it in the presence of the stenographer you dictated anything or suggested anything to Mr. Kelso?

A. I did not.

Q. You say to the court that while this was being prepared you were not present. Is that what you want to say?

A. Which paper?

Q. The petition or the order accompanying it?

A. I was present when the petition was prepared. I said that.

Q. Who dictated that?

A. Mr. Kelso, I did not.

Q. You heard it dictated?

A. I did not. I was sitting in the back room.

Q. Did you read it after it came to you?

A. Yes sir.

Q. And then you swore to it?

A. Yes sir.

Q. Did I understand you to say that at no time have you been in this Zier & Co. plant?

A. No I don't think I ever was there in my life.

Q. I want you to state?

A. No.

Q. I will ask you if on Saturday afternoon in company Mr. Kelso you did not go through the M. Zier and Company plant and that Frederick Ruoff was also present with you?

A. No sir.

Q. And if you didn't make the remark after going through the plant that the whole thing was not worth having any fight about?

A. No sir.

The Court: Issue a subpoena for Mr. Ruoff.

Q. Do you know Mr. Ruoff?

A. I do not know that I know him. I was never introduced to him.

Q. And you say to the court that neither on Saturday the 20th of February, 1903, or any other day—

The Court: That is the 21st.

Q. Or any other day prior to that time or since that time you have been in the M. Zier & Co. plant?

A. No sir I have not been in it.

Q. On Friday afternoon were you at this cafe at any time?

A. No sir.

Q. What time did you go to Louisville that night?

A. Friday?

Q. Friday? yes.

A. At dark, about six o'clock, at dark or about in that neighborhood.

Q. What time did you get to New Albany that morning?

A. About ten o'clock.

Q. And you did not leave New Albany until dark?

A. No sir.

Q. What were you doing there all day except the hour you spent in Mr. Kelso's office?

A. Waiting to be heard in connection with the Watts matter.

Q. Where were you waiting?

A. In the court room—in chambers.

Q. I understood you to say you stayed there about an hour in your original examination.

A. In the morning?

Q. At any time. When you tilted your chair back.

A. That was in the afternoon when they all went out.

Q. You sat there about an hour?

A. It may not have been quite that long.

Q. Where else did you stay from ten o'clock till dark?

A. From ten o'clock in the morning until the noon hour I was at Judge Utz's office and from there I went to Mr. Kelso's office, from there I went to get some oysters and then Judge Utz ordered us back at 3 o'clock.

Q. When you got there about three o'clock how long did you stay there?

A. I was there perhaps until half past four or five.

Q. When was it Judge Utz was invited out to the cafe?

A. Friday?

Q. Don't you know that that party spent nearly the whole afternoon at this cafe?

A. I don't know where they spent their afternoon.

Q. You didn't spend your time with them?

A. No sir?

Q. Where were you?

A. Part of the time in Judge Utz's office lying or sitting in a chair and I was walking around looking for Mr. Watts and my brother and they were looking for me.

Q. Where?

A. They told me they came back to the court house to look for me and I had gone out to look for them and we missed each other.

Q. They were out to this cafe and you were there and you were there for the purpose of squaring Watts with the Judge, was that the reason you were with them?

A. I wasn't with them.

Q. You did not have any part in that?

A. No sir.

Q. How did you spend Saturday afternoon with them?

A. No sir to the best of my recollection I was not with them Saturday afternoon.

Q. You heard Mr. Watts testify?

A. Yes sir; I cannot help that.

Q. You say you were not at the cafe?

A. No sir.

Q. Neither day?

A. Friday I am certain I was not. I may have gone in there Saturday.

Q. Do you mean to say that they held court from 3 o'clock to six, until dark?

A. No sir.

Q. The Judge was not there with you?

A. No sir. I was waiting for my brother.

Q. Do you know where the U. S. Clerk's Office is in New Albany?

A. Yes sir.

Q. You were there that day were you not?

A. Friday?

Q. Friday.

A. No sir.

Q. Do you know Mr. Cardwell, the deputy U. S. clerk?

A. I know him when I see him and I was introduced to him.

Q. Do you say to the court that you were not in Mr. Cardwell's office at any time on Friday?

A. No sir, I was not.

Q. You were there on Saturday?

A. I think it was Sautrday.

Q. Looking at some records?

A. Mr.—

Q. Answer the question.

A. Looking for a record.

Q. What record were you looking for?

A. The order of the 17th.

Q. What else did you look for besides the order of the 17th?

A. Nothing.

Q. Nothing at all?

A. Not that I know of.

Q. I will ask you if you did not look over the records of the whole case on Saturday while you were there?

A. I did not.

Q. And you say to this court that you at no time said to Mr. Kelso in the presence of Judge Utz that you would be responsible for the costs in this case if he would go ahead in the new receivership—if he would take the receivership,—that you would be responsible for the costs?

A. I never said it.

Q. You spent Wednesday afternoon, all of Thursday forenoon, all of Friday, nearly all of Saturday in New Albany solely for Mr. Watts' benefit?

A. That is true.

Q. And you continually advised Judge Utz and Mr. Kelso that they ought not to pursue this matter any further in the way of getting a new receiver?

A. I did not advise them at all. I gave it as my opinion.

Q. You advised them to take another course.

A. I did not advise them at all.

Q. You gave it as your opinion?

A. Yes sir.

Q. Did they ask you for that opinion or were you around there giving your opinions just free hand?

A. They were asking me for my opinion on hypethetical questions.

Q. Who?

A. Judge Utz.

Q. Give me one hypothetical question that he put to you.

A. He put to me this hypothetical question, whether it would not be advisable for the Floyd Circuit Court to undertake to take from this court the M. Zier & Co. plant and I told him it would not be in my opinion.

Q. When was that hypothetical question put to you?

A. Thursday or Friday, I cannot remember.

Q. Any others that you remember that were put to you?

A. Not specially.

Q. Judge Utz and Mr. Kelso were continually insisting that this matter should be pursued further and a new receiver appointed, is that right?

The Court: Answer yes or no.

A. I cannot answer it yes or no. I can answer yes to one part and yes to the other part.

The question was read to the witness.

A. Judge Utz said that he was going to appoint another receiver.

Q. I will ask you if there was not an arrangement made between you and Kelso that when this summons or citation was issued Watts left Mr. Kelso's office and said in your presence that he would go to Goodbug's and wait there to be served on Friday?

A. No sir.

Q. I will ask you if on Saturday you did not say to Judge Utz in the presence of Mr. Kelso and the deputy clerk of Floyd County and Mr. Watts—if you did not ask this question of the judge; what is the statute here concerning the militia? And if the Judge didn't say to you, "why do you want to know that?" And if you didn't say, "I never start anything but I end it. I am a great state's rights man."

A. I did not say that, but I will tell you what I did say. What date was that?

Q. On Saturday.

A. I do not know that it occurred on Saturday, but it may have occurred on Saturday again. It is exactly what I said to Judge Utz when he was insisting on taking that property back after it had been delivered to your receiver. I told him then and there not to take anything like that, because if he did he might just as well get ready with his soldiers.

Q. And you did not say that you never started a thing but you went to the end and that you were a great state's rights man?

A. No sir.

Q. Didn't you say that a dozen times during the three or four days you were there?

A. No sir.

Q. Didn't you say to Mr. Kelso that you were a great man for records?

A. I did not.

Q. And relate to him an experience you had had with the U. S. District Court of Kentucky on the record question?

A. I did not.

Q. I will ask you if it is not true that you and Kelso and the Judge of the Circuit Court together arranged that this addition made to the order of February 14th concerning Mr. Kelso should be put upon the record?

A. No sir.

Q. And if you didn't advise it should be done?

A. No sir.

Q. Do you say to this court that in your office you did not say that you would go to Jamaica than come to Indianapolis because you would have to testify against your friend Watts?

A. I did not say that in my office or at any other place, or at any other time, or anything like it.

Q. Do you know the deputy clerk of the Floyd Circuit Court?

A. No sir.

Q. Is it not true that when the sheriff went out to serve it after the petition was signed and filed, that is the petition you signed, you went through from the office of Mr. Kelso and looked over the law with him and took down the statutes governing the law of Indiana that afternoon that the petition was signed by you in his office?

A. No sir I never examined an Indiana statute in his office or any place else that I know of.

Q. I will ask you if in the county clerk's office of Floyd County on Thursday or Friday the 19th or 20th you did not in the presence of Edgar Martin, William Rath, deputy clerks of Floyd County, advise and insist that Mr. Kelso go ahead with this proceeding to have a new receiver appointed?

A. No sir I did not.

Q. Nor said anything in their presence about it nor gave any advice on that subject?

A. No sir.

Q. Of course you were surprised when you were cited to appear in this court for contempt?

A. Yes sir, certainly.

Q. When did you first learn that you had been cited?

A. Sunday night—I mean Saturday night.

Q. By whom?

A. I think it was Mr. Kelso that telephoned.

Q. You wanted them to get together that night?

A. No sir; they telephoned me to come over and I said I could not come at such an hour.

By the Court:

Q. You say they? Who?

A. I think Mr. Kelso. I do not know whose office that was.

Q. Judge Utz and Mr. Kelso wanted to see me they said, I don't remember the words, that there had been a citation come down.

Q. Did Mr. Kelso ask you to act as his attorney in his case?

A. He did not.

Q. The only time he ever asked you to act as his attorney was when he asked you to act as his attorney in this receivership and you refused it?

A. That is correct.

Q. What reason did you give for refusing to act as attorney for the receiver?

A. I had as much business as I could attend to on the other side—

Q. You were attending to business on this side?

A. I was in the interests of a friend and lawyer.

Q. After all the four and a half days that you spent there —all the nights and days, until dark—you did not accomplish very much?

A. No, I certainly did not. I will regret it all my life.

Q. That was because Judge Utz was so mad all the time that you could not get any satisfaction?

A. I did all I could do to get the matter straightened out.

Q. You have filed a written response in this case?

A. Yes sir.

Q. You both deny that you are guilty of contempt in that response and also set up that the orders by this court are void.

By Mr. Fairleigh: That is a record and speaks for itself.

The Court: He has a right to ask him. It is preliminary to something else.

A. Yes.

Q. Part of that was prepared in Indianapolis and part in Louisville?

A. My best impression all prepared here.

Q. Part in ink and part in typewriter?

A. Really I don't know.

The Court adjourned until 2:00 P. M.

THURSDAY, MARCH 12, 1903.

AFTERNOON SESSION.

The Court met pursuant to adjournment.

John R. Watts called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. Flexner:

Q. Please state your name.

A. John Richard Watts.

Q. Your are a member of the firm of W. W. & J. R. Watts?

A. Yes sir.

Q. And brother of W. W. Watts the defendant here?

A. Yes sir.

Q. Were you present at a conference in the office of Messrs. Sachs on Monday, February 23rd?

A. Yes sir?

Q. Who else was there?

A. In the morning my brother, Mr. Morris Sachs, Mr. Dave Sachs, Mr. Kelso, Judge Utz and myself.

Q. Will you please state fully what occurred at this conference on Monday morning, February 23rd?

A. On Monday morning we received a telephone message—

Q. When you say "we" who do you mean?

A. The office; my brother talking at the telephone, to come over to Sachs' office; we didn't go immediately but waited for possibly an hour or may be an hour and a half, and another telephone message came and thereupon we went to Messrs. Sachs' office together. When we arrived there, we went into the back offices and I was introduced to Mr. Kelso and there was then Mr. Maurice Sachs, Mr. Dave Sachs, Mr. Kelso, my brother and myself present.

Q. Was Judge Utz there that morning?

A. No sir. After the introduction Mr. Dave Sachs spoke to my brother. He had,—there were a number of papers on the table,—and he had some paper in his hand. He said, "Will, did you know an order was entered in the Federal Court at Indianapolis on the 17th?" My brother said, "No, I did not. "He said, "Well here is the order" and he read it, part of it; the first part of it with regard to the appearance, etc., and the surrender of the property and he says, "Now there, I say, that settles it."

Q. Who said that?

A. Mr. Dave Sachs. I remember that very distinctly. There was some little discussion about the matter as to the entry of that order and then some paper was read, I think it was the basis or the foundation for the citation, or the copy of the citation wherein in the latter part of it my brother was named with Mr. D. A. Sachs and Mr. Kelso as combining together or something of that sort to retake this property from the Federal Court. Upon the reading of that I turned to Mr. Kelso. No I turned to Mr Sachs first, Mr Dave Sachs; I said, "Mr. Dave, has W. W. ever done anything of that nature in this case? Has he ever by any word of his, or by any action of his or by anything from which you could draw the inference that he desired the State Court to retain this property as against the United States Court?" Mr. Dave said, "No, he has not." I then turned to Mr. Kelso and I said the same thing to Mr. Kelso, and he said, "No, he has not." I said, "Well then, Gentlemen, I don't know, I am the youngest man in the crowd but it does seem to me it is entirely proper, if W. W. has done nothing up to this time, that he should withdraw from this conference." And I

turned to Mr. Maurice Sachs, who was sitting very near the fire, and I said, "Mr. Maurice, what do you say?" And he said, "Well, John, I don't know; it seems to me we are talking this matter over generally in regard to the responses; I don't see why Will shouldn't stay, for we are simply talking the matter over." "Well," I said, "I yield" and I did yield and we did stay there for sometime. Nothing of any importance that I remember was talked over, at least that I recall now during the morning, but we left the office of the Sachs. Oh, yes, during the morning somebody came back from the front offices and called Mr. Dave Sachs to the telephone; somebody said it was Judge Utz at the telephone; Mr. Dave came back and said he, "Judge Utz will be over here at 3 o'clock. Sometime after that we left. We went to our office and there met—

Q. When you say "we" who do you mean?

A. My brother W. W. and myself. We there met Mr. Harry Jewett. He was over there or he came immediately after we got there. Mr. Jewett said that his brother was engaged in some railroad matters and that he couldn't come up here and make a defense for my brother. We talked there for sometime with him about other matters and then a telephone message came as I remember it again calling us to the Sachs office.

Q. Was that in the afternoon?

A. Yes. This was in the afternoon. I should say considerably after 3 o'clock. No, I couldn't fix the time. We went back there and when we got in I think Mr. Joe Sachs and Mr. Dave and Mr. Maurice and my brother and myself were that time. Whether Mr. Joe was there when we came in I am not certain, but I think he was. I was then introduced for the first time to Judge Utz.

Q. Who was there in the afternoon when you came in?

A. The gentlemen I have mentioned. I think all of them were there, Mr. Joe, Mr. Dave, Mr. Maurice, Judge Utz and Mr. Kelso. I again said in the afternoon turning to Judge Utz: I said, "Judge, this morning I asked Mr. Dave Sachs whether or not my brother by any word of his or by any action of his or by anything from which any of these gentlemen men could draw the inference, whether by anything he was seeking to have the State Court retain the possession of this property or to get it back by any means as against the United States Court."

I was looking directly at Judge Utz because I was extremely interested in the matter and Judge Utz says, "No, he did not; on the contrary he has urged always the getting up of the property." I again said to Judge Utz,—I mean to the party "Well, gentlemen, if that is the situation it seems

to me—really I don't want to insist on it—but it does seem to me the proper thing to do is for W. W. to withdraw from this meeting." And I again turned to Mr. Maurice, and Mr. Maurice urged some such reason as he did in the morning that we were simply talking the matter over to see what could be done and he said he saw no necessity of our withdrawing and we didn't withdraw.

Q. Was anything said that afternoon about affidavits, or in the morning?

A. Oh yes, yes sir; yes in the morning I asked Mr. Kelso and I asked Mr. David Sachs, I said, "Well then, Gentlemen, I would like very much for you to give me affidavits to this effect," and both of them agreed that they would give me affidavits showing that W. W. wasn't Mr. Kelso's attorney and that he had nothing to do with the re-taking of the property, along the line of my questions in the morning. After I asked Judge Utz in the afternoon he said he would give me an affidavit. Sometime after that, I can't undertake to say how long, there was still some discussion about the law of the case. I didn't know anything about the law, only that I heard the conversation. Sometime during that conversation, Mr. Kelso was on a side of the room apart from us in a measure, he said, "Judge Utz let me talk to you a minute;" and Mr. Kelso and Judge Utz went out. In a few moments the doors shook, the lock had caught, the snap had caught and I let them in and Judge Utz came in and sat down and Mr. Kelso walked up and down the floor with his hands in his pockets, just pacing up and down, and finally he said, "Gentlemen, I want to know where the costs are coming from in this case; I am going to have to go to Indianapolis and employ some lawyer and its going to cost a whole lot of money to do it, and now I want to know where the costs are coming from." He said, "I will have to—," as I remember it, he said, "I will have to pay some lawyer up there a thousand dollars to defend me in this matter."

W. W.—I mean Mr. Dave Sachs said to W. W. "Will, Mr. Kelso thinks you ought to raise this money." Will said, "Me?" In quite a surprised tone, and Mr. Dave said, "No, not you as attorney; I don't mean as attorney; I don't think he means that, but he thinks your clients ought to do it." W. W. said, "Why, I can't get my clients to do that; I can't ask my clients for that." Just how that ended up I don't know but right along in there Judge Utz spoke up and said, "Why, Kelso, or Charlie"—I don't know which he called him, "I have got some money in Court with which to pay for the expenses of this thing and he says the expenses are not going to be anything like what you say they will be, or can't be as much as you say;" and there was some little

conversation then and Mr. Kelso put on his coat and he said, "Well, I am going up and telephone for a lawyer, telephone to my lawyer, and I am going up there to-night." He turned as though he was to go and Judge Utz said to him, "why, who are you going to employ? Wait a minute, who are you going to employ?" He said, "Why, he said I am going to telephone up to Ferd Winter." Judge Utz said, "Well, what is he, a Republican or a Democrat?" Mr. Kelso said, "Well now, I think he said, I don't know or I wouldn't be sure of that, but he did say, "That don't matter; he is in that waterworks case with Noble Butler"; and Judge Utz says, "Oh well, if that is the case, go on; that is the man you want to get; go on and telephone to him." And Mr. Kelso left the office. He was gone for a little while and he came back after a few minutes and said he wasn't able to get Mr. Winter at the telephone, and as I remember it in just a few minutes we all separated.

CROSS-EXAMINATION.

QUESTIONS BY JOSEPH B. KEALING, ESQ.

Q. Did you ever get those affidavits?

A. No I did not.

Q. Did you ever get an affidavit from Kelso?

A. No sir.

Q. Did you ever ask him for one?

A. Yes sir.

Q. When?

A. In the morning.

Q. What morning?

A. That morning of the 23rd of February.

Q. Where?

A. In Mr. Sachs' office.

Q. Did you ask him to go and write out an affidavit for you?

A. No sir, I did not.

Q. I mean after that did you ever ask him for an affidavit from that time to this?

A. No sir, I did not.

Q. Why didn't you?

A. Why because the thing transpired on Monday and as I understood it he left on Monday night. I may be mistaken about that, but I had the idea, he said he was going that night.

Q. Is that the reason you didn't ask him for that affidavit?

A. Yes sir.

Q. Because he wasn't there?

A. Yes sir.

Q. Did you ever go to New Albany to see him about it?

A. Never did sir.

Q. You know that all Mr. Sachs had to do in this case was to assist your brother?

A. No I didn't know anything about the case.

Q. You knew Mr. Sachs wasn't in this case as a lawyer didn't you?

A. I didn't know anything about the case.

Q. You didn't?

A. No sir.

Q. Do you mean that your firm was representing the Receiver there and you knew nothing about what was going on.

A. Absolutely nothing. I would like to explain that answer in this way.

Q. All right.

A. That mine and my brother's business, while we are a firm or co-partners, we never undertake to handle each other's affairs and we never enter a case jointly if we can help it.

Q. Well was it your present understanding there that Mr. Sachs had been attorney in that case?

A. I don't think I had any understanding about Mr. Sachs.

Q. Didn't even know that your brother had telephoned him to go over to New Albany to help square himself with the judge?

A. All I know is, sir, that on a day in the latter part of the week previous to this Monday Mr. Sachs came into our office while I was there and he said, "Will, I got a telephone to go to New Albany." I think he said Mr. Kelso telephoned him; I won't be sure of that. He said Judge Utz wants both of us over there; and W. W. said, "Dave, I won't go" and Mr. Dave said, "well, Will, when a man calls for you to come you had better come; you are in contempt of this Court possibly;" and we three talked about it a few minutes, and I had no idea of a contempt of this Court, I thought the contempt was of the New Albany Court and I urged W. W. to go. There is one thing I want to mention that I had overlooked, if I may do it at this point.

Q. Go ahead.

A. While I think of it, of the conversation about coming up here on that Monday. May I put it in here?

Q. Go ahead.

A. On Monday afternoon it seems to me my brother said, it occurred in the morning first, my brother asked Mr. Kelso

what about his coming up here and Mr. Kelso said that he had seen Mr. Hester upon the street; as I remember it he said he had gotten those papers from Mr. Hester that he had there with him and he said that Judge Anderson was hot after W. W., and Kelso said, "If I were you I wouldn't go;" then in the afternoon by brother said, "Judge Utz what do you think about my going up there?" He had asked Mr. Kelso in the morning. Judge Utz says, "Well, I wouldn't go" and W. W. says, "Well, Judge, if you say for me not to go I don't know whether I will go or not; I am inclined not to go." And I said, "Now, if you will let me interrupt again Gentlemen, I don't take that position; I think that if W. W. is in contempt of any forum on earth it is his place to be there," and we left there with the intention of coming up here. I beg pardon for interrupting.

Q. All right, go back then; did you know that your brother had been cited for contempt of the Court at New Albany?

A. Not as a citation I didn't.

Q. Answer that question.

Preceding question read by the stenographer.

A. I am doing it the best I can. I understood he was in contempt of that Court but I didn't know he had been cited.

Q. Did you know he was in trouble at New Albany?

A. Yes, sir.

Q. Do you mean to say to the Court that he didn't tell you that he had taken Mr. Sachs over there to help him out?

A. Yes, sir; I mean to say that.

Q. Did you know he had been to Indianapolis before the Federal Court?

A. I knew that; yes sir.

Q. Did you know what he was here for?

A. I think I did. I saw the—

Q. Just answer the question; what was he here for?

A. As I understood it he was here to present some petition to this Judge to avoid the clash of jurisdiction.

Q. Then you knew there was a clash of jurisdiction?

A. No I did not.

Q. Why do you say that?

A. Because I knew he had come up to avoid it.

Q. Didn't you answer that he came up here to present some phase of this case to prevent a clash of jurisdiction?

A. Yes sir.

Q. Where did you get that information?

A. From the pleadings as I heard him dictating part of them in the office and from the newspaper.

Q. And he was trying to prevent a clash of jurisdiction. Did you ask him after he came back what the result of his visit was?

A. I don't believe I could say positively whether I did or not, but I am almost sure I did not.

Q. He didn't tell you?

A. No sir.

Q. You office together?

A. Yes sir, we office together; we don't office together either; his office and mine are separate.

Q. Are you partners?

A. Yes sir.

Q. Well you didn't know then, that he was a good deal troubled and grieved from his actions or looks after he came back from Indianapolis, did you?

A. Yes I did on that day that he came back; I only know it this way, if I may say it.

Q. I don't care how you knew it. Did you know it?

A. I knew it simply from our bookkeeper who told me that W. W. was at his hotel sick on Thursday afternoon.

Q. Did you see him that afternoon?

A. No sir, I did not.

Q. When did you next see him?

A. I don't know now when I did see him.

Q. Did you know up to the time he was cited for contempt in this Court on Saturday night or during that week that he was over at New Albany, didn't you know that he apparently was in trouble with the Court?

A. Which Court?

Q. Either Court or both?

A. I knew on the day that Mr. David Sachs came to our office and that is the first and the only information I had of it as I remember it now, that there was either a contempt proceeding or W. W. was afraid of a contempt proceeding in the New Albany Court.

Q. What day was that?

A. I couldn't undertake to tell you.

Q. How soon after he came back from Indianapolis?

A. I don't know just when that was.

Q. He came back that Tuesday night?

A. Yes sir.

Q. How soon after Tuesday night the 17th of February was it?

A. I can't place the date, sir.

Q. He was in the office on the 18th after he returned from Indianapolis, wasn't he?

A. I couldn't give you a positive answer on that.

Q. When during that week then did you first see him?

A. I don't believe, sir, I could give you an answer; I don't know.

Q. Did you see him that week?

A. Yes sir.

Q. When you did see him could you tell from his appearance or anything he said to you that he was in trouble or appeared to be in trouble with the Court?

A. Now to give you—

By the Court.

Q. Well answer the question.

A. I can't give it Judge—

Q. If you can't answer, say so.

A. I can't answer it except in my own way if you will allow me.

The Court: Read the question.

Q. Question read by the reporter as follows: "When you did see him could you tell from his appearance or anything he said to you that he was in trouble or appeared to be in trouble with the Court?"

A. I want to do it, Judge—

Mr. Kealing: I will withdraw that question.

Q. When you saw him that week did anything in his appearance indicate to you that he was in some kind of trouble. Now answer that yes or no.

A. Yes.

Q. Very well.

A. Now I want to offer an explanation with that.

Mr. Kealing: We don't need the explanation now.

The witness: I want to offer one.

Mr. Fairleigh: He has got the right to explain it.

Mr. Kealing: Go ahead.

The Witness: I don't know where I got the information but I did know—

Q. I haven't ask you about information. I am asking you about his appearance. I haven't ask you anything about your information.

A. I can only explain it in my own manner. I am doing the best I can.

Q. Now from anything he said to you that week did you know that he was in trouble with either the court at Indianapolis or the court at New Albany?

A. Nothing except that morning when Dave Sachs and he and I had a little conference there.

Q. What morning was that?

A. I don't know.

Q. Was that before Sunday?

A. Yes sir.

Q. Was that before he was cited for contempt in this court, the United States Court?

A. I don't know when the citation issued from here. It was before I knew about the citation.

Q. What was that conference about that you and he and Sachs had?

A. Going to Judge Utz'.

Q. What was said at that conference between you, your brother and Sachs before you went to Judge Utz'—before they went to Judge Utz.

A. Mr. Dave Sachs came into the office, I think he said Mr. Kelso had telephoned to him to come over. My brother said, "Well, I don't want to go;" Mr. Dave said, "Well Will, you know when a man telephones for you you had better come; I think you had better go over there." And W. W. turned to me and asked me some question and talked generally about it and finally concluded that it was a matter of policy for him to go simply to conciliate the matter.

Q. Did he go?

A. I don't know except he quit the office.

Q. Now you may tell the Court when your brother came back from Indianapolis on Tuesday night the 17th, the following day, or any day thereafter prior to Saturday when he was cited for contempt, whether he told you what had transpired at Indianapolis about his promising to advise that those goods be turned over.

A. I frankly say I don't know.

Q. Then you don't know whether he told you or not.

A. I can't say whether he told me or when he told me; I don't know where I got that information.

Q. Did you know on Saturday the 21st of February—that was the day that you heard of these contempt proceedings in Indianapolis—prior to that time did you know it?

A. I beg your pardon. Let me see. You say Saturday?

Q. I understood you say you heard of it Saturday night?

A. No I didn't say that. Monday was the first I heard of it.

Q. Prior to Monday—prior to Monday, the day that you heard that he was cited for contempt of the United States Court, did you know from any source what had transpired in Judge Anderson's Court between the Court and your brother on February the 17th?

A. I think I had known generally something of it.

Q. Who told you?

A. I think our bookkeeper told me of it.

Q. Had your brother said anything to you on the subject?

A. I couldn't say whether he did or not; but I don't remember anything he said to me on that subject.

Q. Do you mean to say then that during that whole week that your brother told you nothing of his troubles either with this Court or the New Albany Court?

A. No I don't mean to say that.

Q. What do you mean to say then?

A. I mean to say I never knew anything of the trouble as to the contempt proceedings in this Court until Monday; from some source, I don't know where I got the information, I understood he came home sick and humiliated and had gone to bed from his appearance before this Court here, but sometime before—

Q. (Interrupting) Did you understand that from him?

A. Wait a minute; I did know of either some contempt proceeding or some proceeding that was feared for contempt in Judge Utz's Court on the morning when we three had the conference that I spoke about.

Q. When did he go to bed after he came back from Indianapolis?

A. The only thing I know of it was that day the bookkeeper told me and I wouldn't like to say the exact date.

Q. Did you go to see him?

A. No sir.

Q. Didn't see him at all while he was in bed there?

A. No sir.

Q. Then you knew nothing from what your brother told you about his troubles in New Albany and about his getting Mr. David Sachs to go to New Albany to square himself with the Court because the Court was mad at him? You knew nothing about it?

A. Yes, I did the morning Dave Sachs came over there.

Q. I mean prior to that.

A. No sir.

Q. He didn't tell you?

A. No sir.

Q. Not a word?

A. No sir. I don't know that I positively had seen my brother—

Q. (Interrupting) At this conference you asked the question as to whether or not your brother—

The Witness: (Interrupting) I would like to explain that, Judge.

Mr. Fairleigh: He has the right to explain his answer.

The Court: His testimony consists mostly in explanations.

Mr. Kealing: If the Court please, he said he didn't see him.

The Court: If Counsel on the other side want to draw that out they may do it but this witness explaining instead of answering and explaining every answer will have to stop.

Mr. Fairleigh: Your Honor knows how difficult it is to state the facts just as they are unless an opportunity is given for explanation.

The Court: I do not want any discussion about it. I understand the rule is to answer the question first, and not

only that but Counsel have the right to re-examine or cross-examine. I don't want any more of these voluntary explanations.

Q. Now, Mr. Watts, I understand the first you knew of these contempt proceedings at Indianapolis was on Monday?

A. Yes sir.

Q. Had you seen your brother on Sunday?

A. No sir.

Q. Before the Monday you heard of it?

A. No sir.

Q. Where was your brother on Sunday and Monday? You didn't see him on Sunday? Where was he on Saturday prior to that do you know?

A. No I do not.

Q. You knew he wasn't at the office didn't you?

A. No I did not.

Q. Why?

A. Why, because I am in the court house a great part of my time. I am a busy man.

Q. How late do you hold court over at Louisville in the evening?

A. It depends entirely on the case you have.

Q. Court adjourns at five o'clock?

A. Yes sir.

Q. Well, if your brother was over at New Albany three or four days until after dark didn't you think it a little strange that he didn't appear at the office?

A. That didn't present a strange situation to me.

Q. You didn't stay at the court house until dark on Friday and Saturday?

A. No, sir.

Q. And you thought it was nothing strange for him to be there?

A. I didn't know he was there.

Q. You know it now don't you?

A. I know it now.

Q. You didn't know from him that he was there?

A. I didn't know until now that he was there; nothing called it to my attention.

Q. On Monday you went to Sachs' office?

A. Yes sir.

Q. And you asked Mr. Kelso the question, you asked first Mr. Sachs the question as to whether your brother had advised or done anything to pursue this receivership further in the State Court? That is practically what you ask is it?

A. That is practically the effect of it.

Q. Did you ask that same question of Mr. Kelso concerning Mr. Sachs?

A. No sir.

Q. Why didn't you?

A. Why I was only with my brother.

Q. Why did you suggest at that conference that your brother withdraw from it and leave Sachs in the conference?

A. Why Mr. Sachs had his several brothers there and I was only with W. W.

Q. You were appearing there with W. W.?

A. I was appearing there as his brother.

Q. But you tried to withdraw from the conference; that is, you suggested it?

A. I thought it was wise, and still think so.

Q. And the only reason you staid there was that one of the Sachs said that they were only discussing this matter?

A. Yes, he was the oldest man in the party.

Q. And you thought it was wise to withdraw later on in the evening?

A. Yes sir.

Q. Did you ask Judge Utz why he was over there?

A. No, I did not.

Q. Did you think it a little strange that the Judge of the Circuit Court should be over in the office holding a consultation with these other attorneys?

A. Well I don't know that that occurred to me.

Q. Did Utz say why he was there?

A. Not to me.

Q. Didn't hear him say why?

A. No sir.

Q. Who was it, if any one, said in that conversation that he would rather go to Jamaica than come to Indianapolis?

A. I never heard that expression.

Q. By anybody?

A. Not until I got up here.

Q. I will ask you if David Sachs didn't say that he would rather go to Jamaica than to go to Indianapolis because he would have to testify against your brother?

A. He did not in my presence.

Q. You asked Judge Utz then and Judge Utz told you he would give you an affidavit too?

A. Yes sir.

Q. Did you ever ask Judge Utz for that affidavit?

A. I did not, sir.

Q. Why?

A. Because I expected to come up here with W. W. and I thought both Judge Utz and Mr. Kelso would be here.

Q. Did you have Judge Utz subpoenaed as a witness in this case on this contempt proceeding?

A. No sir.

Q. If you knew that is what he said why didn't you subpoena him?

A. I didn't issue any subpoenas in the case.

Q. Why didn't you have him subpoenaed for you?

A. Because I am not an attorney in the case.

Q. All the reason you didn't get Kelso's affidavit was because you didn't think Kelso was there?

A. No.

Q. That is what you said.

A. I will explain that.

Q. Is it the reason you didn't get Kelso's affidavit was because he left for Indianapolis?

A. Yes; and I thought Judge Utz would be here too.

Q. You knew for the last week that Judge Utz has not been at Indianapolis, didn't you?

A. This last week?

Q. Yes.

A. I don't know where he has been the last two weeks. I know I was up here sometime ago and he was here. I will explain in addition the reason I didn't ask Mr. Utz and Mr. Kelso was because I read their testimony.

Q. Where?

A. Taken here on Mr. Kelso's trial.

Q. Where did you read it? When did you read it?

A. Part of it here and part of it on the train.

Q. From the newspapers?

A. No sir; from the stenographic report.

Q. You had a stenographic copy made of this testimony before this case came up?

A. I got a copy; yes sir.

Q. Did you learn at any time prior to the Monday that you met in Sachs' office that Mr. Sachs was acting as attorney for Mr. Kelso?

A. I didn't even know it then, and I hadn't learned it prior to that time and I never did learn that until these proceedings were on.

Q. And I understand you didn't then know that your brother was acting as attorney for the Receiver?

A. No, I don't say that.

Q. Oh, you did know that?

A. I didn't know he was acting as attorney for the Receiver but understood he was.

Q. When did you learn that?

A. I don't know that; I think the same day that the suit was brought down in New Albany.

Re-examination.

Questions by Mr. Flexner.

Q. You have said upon cross-examination that you didn't see your brother while he was sick, or when he was sick. What sickness do you refer to?

A. He was sick twice. On one afternoon, Mr. Fairleigh, he was sick, and on the same night—that was Monday night —of our conference with Mr. Kelso and Judge Utz and the Sachs he was sick then and sick for sometime afterwards.

Q. In this latter sickness did you see him at all?

A. Yes sir?

Q. So that your answer refers to the afternoon of the week before?

A. Only to that one afternoon.

Q. You say that you do not see your brother sometimes for days at a time; that it was not unusual for you not to see your brother for a day or two?

A. No sir, that was not unusual.

Q. Why was it not unusual?

A. Because, Sir, our practice is almost entirely separate and distinct, both of us being very busy, and we have made it a rule not to interfere with each other's business in the office.

By Mr. Kealing:

Q. But if you have a case that is very important, involving possibly a citation before a Court for contempt on the part of your brother, isn't that important enough to have a consultation on in your firm?

A. This is the only case of that sort that has ever occurred in the office.

Q. Sir? I didn't understand your answer.

A. Read him my answer.

Q. Read him the answer.

The answer to the preceding question was read by the reporter.

Q. But where there is trouble as it now turns out, that you now know, respecting the clash of jurisdiction between the two courts—

Mr. Fairleigh: I submit that is argument your Honor.

Mr. Kealing: I haven't finished my question.

Q. (Continuing) As there was in the M. Zier case during the days from February 17th to February 22nd, is it not customary on matters of such importance to have consultations?

A. Looking back upon it now I think it is, but it evidently was not in this case; and we have had other cases of a similar nature, the one that the Judge referred to, the Etheridge case, I didn't know anything about.

Q. How long ago was that?

A. I don't know.

Q. You said you knew nothing about it. How long ago was it? Perhaps you were not in the firm then?

A. Oh yes.

Q. How long ago was it?

A. Was what?

Q. This Etheridge case?

A. I don't know, sir. The Judge referred to it here from the stand.

Q. Do you remember anything about the case?

A. Not a thing.

Q. Didn't you say you was in the firm when that case was in the firm?

A. I thought the case read my name—

Q. I am asking you, Sir, if your recollection is you were in the firm when that case was there?

A. I imagine I was.

Q. Do you recollect anything of it?

A. No sir.

By Mr. Smith:

Q. Mr. Watts in the conference at Mr. Sachs' office on Monday, did Judge Utz—Monday afternoon I refer to—did Judge Utz say anything with reference to if Mr. Sachs and Mr. Watts wouldn't go to Indianapolis that Mr. Hester could fix it up or if he couldn't see Hester he could get Stotsenberg to see Hester and it could be arranged without any further proceedings in the United States Court at Indianapolis?

A. Yes sir; there was a conversation of that sort. A number of suggestions were made for the purpose of getting a settlement of some sort and somebody suggested to Judge Utz that he see Hester. Judge Utz says, "No, I will have Stotsenberg see Mr. Hester and I think through him we can get some sort of a settlement.

By Mr. Kealing:

Q. You spoke a moment ago of talk of hiring, Kelso hiring an attorney at Indianapolis. Did you hear Mr. Sachs say to Mr. Kelso that if he was in his place he wouldn't emply Mr. Newberger because he wasn't the right kind of a man to present such a case?

A. I never heard Mr. Newberger's name mentioned in the conference.

Witness excused.

Maurice A. Sachs, a witness called on behalf of the defendants being first duly sworn testified as follows:

Direct examination. Questions by Mr. Smith.

Q. Give your name, Mr. Sachs.

A. Maurice A. Sachs.

Q. Are you the Maurice A. Sachs of M. A., D. A. & J. D. Sachs attorneys practicing law in Louisville?

A. Yes sir.

Q. You are the older brother of these two gentlemen?

A. Yes sir.

Q. What is your age, Mr. Sachs?

A. Fifty-six next month.

Q. How long have you been practicing law?

A. My law school diploma which was my license is dated 1866.

Q. You graduated in Louisville then?

A. Yes sir.

Q Been practicing law there ever since?

A. Ever since.

Q. Mr. Sachs were you present in your office on Monday the 23rd of February in the forenoon when Mr. Kelso came over there to see your brother D. A. Sachs?

A. Yes sir.

Q. Did you hear any conversation between them on that occasion? I speak of a morning hour now.

A. I came into the back room of our offices and when I came in I found my brother was there and I think that Mr. Watts was there, Mr. W. W. Watts and his brother, and I was introduced to Mr. Kelso; I had never met him before; and I took a seat there at the table just to listen, or to see or to hear what was going on, and I had not been invited in there at all.

Q. Up to that time had you had any connection with these proceedings in the Zier cases, either the bankrupt or the state proceeding?

A. Personally none.

Q. Had you known anything of the proceedings at all?

A. Yes sir.

Q. What was the extent of your knowledge on that Monday?

A. A brewery firm at Louisville, Walters, had a contract with the Zier concern before this failure, before the Court proceedings at New Albany. The Walters at Louisville applied to my youngest brother—there are three of us—to look into that matter; a contract for boilers that the Zier Company were building for them was unfinished, and I knew that that matter was in the office. Personally I had no connection with it. I only knew that from the fact that my youngest brotder often talks to me about matters in his hands.

Q. Up to that time had you any knowledge of the conflict of jurisdiction that had arisen between the two courts, the Federal and the State Court?

A. No sir.

Q. Had you been called into consultation in regard to any such conflict at all up to then?

A. Never and I was never called into any consultation about it. I happened to come it.

Q. Had you been consulting in regard to any complications that Mr. W. W. Watts had supposed he was about to get into or was in?

A. No sir.

Q. Now at the time you went into the back office there did you hear any conversation as between Mr. Kelso and your brother D. A. Sachs? Perhaps you had better go on and state in your own way what occurred there that morning, Mr. Sachs, if you will remember.

A. I will try to tell you but I must say this, that I done more thinking, and wasn't listening part of the time as to what they were talking about. I will do the best I can. My recollection is I came in and I saw some gentlemen there, that is those I have named, and I took a seat at the table, and my brother had a paper, had an order made by this court at some date prior to that, and handed it to me, and I read it, and I then asked the gentlemen to tell me something about this matter. I may say that it was all practically new to me up to that time; and my brother told me; I can't tell you just—I am only telling you that between them they gave me a sort of a general idea about this Zier concern having become insolvent and I had to take up the time simply to give me a general idea of what has been developed here at this trial.

Q. An outline of the record?

A. An outline.

Q. Well?

A. Well, when they got through with all that I will admit I did not appreciate the seriousness of the thing; I turned around and I said: "Will, always deal fairly with courts; if you will go up to Indianapolis and see the judge of that court and will tell him what you tried to make clear here to me, turn this property over to him, to his court, why I think although you may be technically guilty of some offense, the Judge if he wants to do right will take cognizance of that;" and I talked to him as I was so much older than he; I considered myself a pretty old man; and I talked to them in that way; and that was practically all I had to do with it.

Q. Did you hear your brother, D. A. Sachs make any statement at that time in regard to what he thought ought to be done or what was the result or effect of that order?

A. Oh yes sir; I will say that he did say when I said "Why this order ended things; this is plain," why he said, "Well there, that is what I told you." Turning to Kelso or

some one sitting there, I thought it was Mr. Kelso. There was another matter developed in that meeting that I just happened to think about.

Q. Was there anything said there that morning in regard to anybody having become responsible for the costs of the Receivership accepted by Mr. Kelso?

A. There was something said about Mr. Watts ought to do that, or ought to furnish some money to help Mr. Kelso.

Q. Who said that?

A. Mr. Kelso is my recollection.

Q. Was there anything said about D. A. Sachs at any time that day?

A. Nothing of that sort said and no inference of that kind.

Q. Were you in there in the afternoon when Judge Utz arrived?

A. I generally get back at half past three and I came in shortly after I came back to the office.

Q. Who was there when you got back there in the afternoon?

A. These same parties that were in there in the morning it seems to me, except that Judge Utz had arrived in the meantime. My best recollection is now that it was developed there in the morning that Judge Utz desired to be present and that in the afternoon when I came back from lunch—I generally get in about half past two—and I walked back and found he was there; I was there introduced to him, I remember that; I never had seen the judge before.

Q. Now did you hear any conversation that afternoon between Judge Utz and Mr. D. A. Sachs and Mr. Watts, W. W. Watts, as to whether or not he desired them to attend, or whether they intended to come to this Court at Indianapolis in reponse to these citations?

A. Yes I did hear a discussion of that question.

Q. What was that?

A. Well now, when I say I heard it I didn't pay close enough attention to that to be able to tell you just what was said. Let me think a minute. Well, I don't want to guess about it. I wouldn't like to make a statement unless I remember it.

Q. Did you hear your brother say anything to the effect that he would rather go to Jamaica, Texas or California, then to give evidence against his friend Watts?

A. I am very positive that no such statement as that was made.

Q. Did you hear any conversation on the part of Judge Utz and these gentlemen in which some suggestion was made that Mr. Hester be seen, and Judge Utz suggested

that he would see Mr. Stotsenberg to avoid the necessity of their appearing here.

A. In the afternoon. In the afternoon, towards the close of that afternoon interview, Judge Utz was sitting at the table and Mr. Kelso was walking up and down the other side, as if it were there (indicating a position in the Court room) a question came up about money matters. Mr. Watts had been called in and when it was put to him that he was to raise money or ought to do it, he looked surprised; and there was some running conversation about it; Judge Utz was sitting at the table; "Oh, well, he says, it is not going to require so much money." Mr. Kelso thought it was going to be very expensive and the Judge said that he had some money in Court. I am not going to give you the figures because I can't; I wasn't noticing the figures; he had some money in Court in this matter that could be appropriated to that purpose, and then in that connection it was mentioned that they were to see Mr. Hester, I believe, who was supposed to be the opposing counsel, and that they would talk this matter over and see what could be done towards settling it, or something of that kind; I can't tell you definitely.

Q. You can't remember that conversation definitely enough to give it?

A. No.

Q. Or undertake to give it?

A. I will say that that was late in the evening, and then Mr. Kelso said he would go to the telephone, long distance telephone, and telephone up here to Indianapolis to—I think he mentioned the name that I heard mentioned here, a gentleman don't know, Mr. Ferd Winter, and he came back shortly afterwards and said either that he couldn't get him or that he couldn't secure his services, and that finally ended it. He then went off.

Q. That is all you know about this conference is it, Mr. Maurice.

A. Yes sir.

By Mr. Fairleigh:- I wish you would say to this Court whether during these conferences on the 23rd of February you heard Mr. John R. Watts ask Mr. D. A. Watts, Mr. Kelso or Judge Utz, with reference to his brother's connection, as to whether he did anything or advised anything in opposition to the turning over of this property?

A. Yes sir.

Q. What responses did those gentlemen make to that inquiry?

A. I couldn't tell you what the answers were but I did hear Johnny Watts speak about getting affidavits to show that his brother had taken no—or done nothing towards interfering with the orders of this Court.

Cross-examination by Mr. LaFollette:

Q. Mr. Sachs are your offices in Louisville adjacent rooms, you and your brother's?

A. They are peculiarly divided, Mr. LaFollette; there are four rooms that were originally intended for two offices; there is quite an intervening space between the front and back part of the house. It is a long business.

Q. During the week preceding the Monday at which you heard the conference you have related, or at which you were present did you hear anything about the M. Zier & Company concern and its history in the Court at Indianapolis and at New Albany?

A. Nothing of sufficient importance to make me now recollect it at all, only about this Walters controversy; nothing connected with this matter; nothing.

Q. Did you know that W. W. Watts had had occasion to call your brother to go with him over to the Floyd Circuit Court?

A. Oh yes. Yes; now wait a minute. Let us see. What was the date of the proceedings here?

Q. On Monday and Tuesday the 16th and 17th of February here.

A. The 16th and 17th of February. It was upon the 17th of February that this Court made an order, the order that was finally sent down, the one that I looked at Monday? That was the 17th wasn't it? And this Monday following was the—

Mr. Fairleigh: 23rd.

A. (Continuing) 23rd. Yes I did know that Mr. Watts had called on my brother to help him out of his trouble some.

Q. Did you know that he came to New Albany on Wednesday afternoon or morning, anyhow Wednesday sometime?

A. Who?

Q. Mr. Sachs, your brother, in company with Mr. Watts.

A. I didn't know anything about it.

Q. You didn't know that?

A. No sir.

Q. Did you know he was also at New Albany on Thursday the day following?

A. No sir I did not.

Q. And Friday and Saturday?

A. No sir I did not. That is, I didn't know anything about it prior to Monday.

Q. Prior to Monday. During the week was there no question came up in your office about the law governing the matter of rights of courts as to jurisdiction?

A. No sir, no.

Q. Was that question discussed in your office?

A. Well I won't say that either, but not with me to such an extent as would have made any impression on my mind.

Q. There was no such examination of authorities or discussion of the law in your offices during that week that brought to your knowledge the fact that there was a conflict of jurisdiction between the Floyd Circuit and the United States District Courts?

A. I remember only one instance; that sometime during that week my brother Dave spoke to me about the question of jurisdiction I believe between the—jurisdiction as between the United States Courts in bankruptcy and the State Courts where there was a proceeding pending in the State Court; well, hypothetically this case you may say, and I remember this: that I picked up Loveland, the Clerk of the United State Court at Cincinnati's book on that subject, Loveland's Bankruptcy, and we had been along that line in a case that we had that came up early under the act of 1898, when the whole thing was new, we were always mystified about it, and I remember now I handed him that book, and I called his attention to a foot-note where there are cases cited a list that deep (indicating) on either side of the question.

Q. Didn't you learn then that the reason why he was examining those authorities and talking about the law to you was because there was a conflict between the Floyd Circuit and the United States District Court?

A. Well I couldn't say that; I told you it was put to me as a sort of a hypothetical proposition, and I didn't know what it had application to.

Q. Didn't you by reason of that talk about the law learn that W. W. Watts had been at Indianapolis in an effort to convince the Court here that the Floyd Circuit Court had jurisdiction in the M. Zier case and the order which had been made appointing Mr. Connor a Receiver should not be enforced?

A. Why no, I can't say that I knew anything about it or heard enough to make me pay any attention to it. I don't like to—

Q. (Interrupting). I am asking what you know about it?

A. I will tell you. I will tell you all I know about it.

Q. Now from each day, Wednesday, Thursday, Friday and Saturday, didn't you on any of those days learn that that question was on there at New Albany and that that was why your brother was going over there every day?

A. I didn't know he was going over every day.

Q. Didn't you?

A. No I did not. One day, one day it seems to me that I knew that he was going to New Albany; I don't like to be making long winded explanations but I can't help myself.

By the Court:

Q. I don't know why you can't, Mr. Sachs. Why can't you answer the questions without explanations?

A. I will try my best. I was going to suggest to your Honor the reason why I knew so little about it is that our business is divided up.

By Mr. LaFollette:

Q. Well if you didn't know it that ends it; I am asking if you didn't learn it in the course of the week and if you didn't you didn't. Now on Monday you did hear more definitely about the matter, didn't you?

A. Oh, yes.

Q. You say you were not called into the conference? You walked into it?

A. That is my best recollection of it.

Q. But when you walked into this room in which these gentlemen were engaged in conversation you stopped there, did you?

A. Why certainly I took a seat at the table. I remember that.

Q. And after you did take a seat at the table what did you learn about the questions that were being discussed? How soon did you learn about it and what did you learn?

A. Well I asked for information as to the matter to get the facts as best I could.

Q. What information did you get?

A. I wanted to know what they were talking about?

Q. What did you learn?

A. Practically what has been told here in various shapes.

Q. Did you learn there that Mr. Watts had come to Indianapolis in connection with Henry Jewett on Monday the 16th of February to argue the proposition of the jurisdiction of the courts and endeavor to convice this court that the order that had been made directing the property of M. Zier & Company to be placed in the hands of a receiver in bankruptcy should not be enforced because the Floyd Circuit Court had had jurisdiction of it prior to such order?

A. (To the reporter: Will you read that question?)

The question was read.

A. No I didn't learn what you stated there in that question.

Q. Well did you learn that Mr. Watts had been at Indianapolis at all.

A. Yes sir.

Q. Did you learn that immediately following that he and Henry Jewett had gone to the Floyd Circuit Court saying that they intended to turn over the property of M. Zier & Company to Mr. Connor, Receiver in bankruptcy?

A. I heard that Mr. Watts and Mr. Jewett had gone to the Floyd Circuit Court but exactly for what I can't say.

Q. Did you hear that there was some claim that they had by some action placed themselves in contempt of the Floyd Circuit Court?

A. I think Mr. LaFollette in explanation of that order of this Court—

Mr. LaFollette: You can answer the question. Read the question to him.

The question was read.

A. Oh yes sir.

Q. And did you also learn that they had been cited for contempt in this Court?

A. Yes sir.

Q. Was the matter explained to you so that you gentlemen —were they in a discussion of the law bearing upon the case at that time?

A. I can't tell you that; I don't remember that.

Q. Is it a fact that during that Monday a considerable part of the conversation that was had in your office was a discussion of the law bearing upon the question of jurisdiction?

A. I should say No.

Q. How long did the conference of the morning last?

A. I came in there about half past ten o'clock; I think I was in there an hour or so.

Q. Well, were you in there as long as the meeting was in progress as a conference?

A. I wouldn't like to say sure because I don't remember that; I may have gone out before some of them left.

Q. Was there another meeting held in the afternoon of the same parties substantially?

A. With the addition of Judge Utz.

Q. Were you present when Judge Utz came in?

A. I can't say.

Q. But you do remember that you were a meeting at which Judge Utz was also present?

A. Sure, sure.

Q. You remember that Mr. Kelso was present?

A. Certainly.

Q. Had you learned in the meantime that Mr. Kelso had been appointed Receiver in the State Court and had taken charge of the M. Zier and Company property by means of a writ issued to the sheriff of Floyd County?

A. Yes sir, there was—certainly I must have been told about that.

Q. Did you know prior to the action of the sheriff in taking the property that your brother D. A. Sachs had appeared in the Floyd Circuit Court or at least before the Judge of the Floyd Circuit Court, and either before the Judge or at Mr. Kelso's office made an affidavit in which he appeared as the attorney for the United States Tube Company and had it filed before the Judge?

A. I did not.

Q. Had your brother told you nothing about that?

A. No sir.

Q. During the week?

A. No sir.

Q. And didn't he on that Monday tell you that he had taken that action?

A. No sir.

Q. Didn't he tell you that he had that far connected himself with the proceeding.

A. Not that I can remember, Sir.

Q. Was there anything said after Judge Utz came when Mr. Kelso was present about your brother D. A. Sachs being the attorney for Mr. Kelso as Receiver?

A. I knew that he had not been from the conversation that took place there.

Q. How is that?

A. I knew that he had not been from the conversation that took place there.

Q. What was it that took place that gave you such knowledge as that?

A. There was no demand made upon him that indicated that; no intimation of that sort; I know it more from the absence of anything than from what was actually said.

Q. You think you know it from what was not said?

A. Precisely; from the attitude of the parties; from the way they were talking.

Q. Well, didn't you know that your brother D. A. Sachs had taken the position there before the Floyd Circuit Court that that Court, the State Court, had jurisdiction as against the Bankruptcy Court of the M. Zier property?

A. You mean when?

Q. The week prior to the meeting on Monday.

A. Oh no.

Q. You didn't know that?

A. I knew nothing at all about it; at least if I did I have forgotton.

Q. Was there anything said in the course of that meeting on Monday either by Mr. Kelso or Judge Utz to Mr. Watts

or Mr. Sachs, D. A. Sachs, about the proceedings that had taken place the week before and about his advice in the matter?

A. Yes sir, there was some talk about that and he corrected that two or three times saying, "I never undertook to advise anybody."

Q. Your brother said that?

A. Yes sir.

Q. Well what was there that had been said that induced your brother to say that he had not made any effort to advise them?

A. They were speaking about some of these late proceedings.

The Court: I can't hear you.

Preceding question and answer read by the reporter.

Q. Hadn't they said to him that they had acted under his advice as the reason why he was then undertaking to say that he hadn't advised them at all?

A. No.

Q. Well you do say that you heard him say that he didn't advise them, didn't you?

A. There was some questions came up there possibly, I can't tell you exactly the connection; I was interested in asking that question myself, and I heard him make the correction; I can't explain it exactly; I will try to do it if I can.

By the Court:

Q. What was it you heard him say?

A. I heard him say that he hadn't been advising with these people in answer to my question; I asked the question, I being the older. Now that is my recollection. My recollection is very fair about it. I asked him if he had been advising with these people and his answer was no; I was asking questions, and expressed opinions once in a while or something of that sort.

By Mr. La Follette:

Q. That is the way he answered you?

A. Yes sir.

Q. After he had been asked questions?

A. He had given opinions about matters.

Q. Did he explain to you what his opinions were as given over there, when he was giving opinions?

A. I wouldn't undertake to say that for I can't remember it.

Q. Were you endeavoring to learn from your brother D. A. Sachs what position he had assumed over there in the State Court?

A. No sir.

Q. Well then why were you asking about what attitude he had assumed in it?

A. Just to get general information.

Q. Was the question of what kind of a response or responses were to be made in this court under consideration?

A. They were considering that; they were talking generally about that.

Q. That was what was before the meeting wasn't it?

A. And I right from the start I said just what I said when I started out here to-day; I said "Gentlemen, go and make your explanation; you don't need any responses, go and see the Court."

The Court: You were not asked for that. Confine yourself to the question.

Q. Had you learned then that your brother and W. W. Watts were each included in an order to show cause in this court why they should not be punished for contempt?

A. On that Monday?

Q. Yes. Did you learn that?

A. I don't know; I expect I did.

By the Court:

Q. You don't know really what advice you gave more than you have stated?

A. As you have asked me, I can only wind up as I began; I considered myself an older man than all of them. I didn't consider anything serious in it. I said, "Go and tell the Judge of the Court candidly what has been done; turn over the property and do right and the Judge will do right."

By Mr. Kealing:

Q. You don't know why they didn't take your advice?

A. I cannot tell you.

Q. You know that they didn't take your advice?

A. This was after all the trouble had been done, if I am right.

Q. Except the coming back here and answering the citation?

A. Yes sir.

By the Court:

Q. That was the time you gave the advice? You told them to come up here and turn over the property and do what was right? You know now that they didn't do it?

A. Yes sir.

Witness excused.

Jos. G. Sachs, called for the defendants, being duly sworn and examined by Mr. Smith, testified as follows:

Q. Are you a member of the firm of M. A., D. A. and J. G. Sachs?

A. Yes, sir.

Q. Practicing law in Louisville?

A. Yes, sir.

Q. How long have you been engaged in the practice?

A. Since 1882.

Q. What aged man are you?

A. Forty-one last October.

Q. Were you over at New Albany upon Friday, February 20th in the afternoon?

A. I was over there on Friday afternoon in February but I do not like to be positive about the 20th. If you say it was the 20th I will believe it.

Q. I call your attention to the fact that it was the Friday when your brother D. A. Sachs and Mr. Watts and Judge Utz and Mr. Kelso were in Judge Utz private chambers there?

A. I was over there the Friday that they were there.

Q. What time in the afternoon did you get there?

A. I could not tell you but between three and half-past three.

Q. What was your business over there that day?

A. I went over to see about what could be done about getting a boiler contract finished for the Walters, which the Receiver had undertaken to carry out by the order of Judge Utz.

Q. Had you been over there before in regard to that same matter?

A. I was there at the meeting of the creditors in Judge Utz Court.

Q. You were there as the representative of this brewery concern in your city?

A. Well, yes and Mr. Hester was assisting me.

Q. On this Friday when you went over there did you know that your brother and Mr. Watts were already over there?

A. No, sir; I did not.

Q. Had you been at your office for a week?

A. I cannot say I had been away for a week. I think I took sick on Monday or Tuesday of that week and did not get down to the office until after that Friday. That Friday afternoon I went directly to New Albany from my house.

Q. What was it that occasioned you to go over there at that special time?

A. Word was delivered to me, I cannot say how it came positively, whether by phone or not, but I got word that the Walters people were very restless that their contract was not being carried out and that the boilers had not been delivered and they were being delayed and they begged me to go over.

Q. Name the parties that were present in there when you went in there?

A. Judge Utz, Mr. Kelso, D. A. Sachs and I can not say whether the clerk was in there all the time or not but there was some gentleman whom I presume was the Clerk who was in and out of there.

Q. Was W. W. Watts there?

A. Not when I got there. I do not remember who opened the door when I got there but my brother came up to me and spoke to me about my being out and while we were there talking Judge Utz and Mr. Kelso were talking together and the whole thing was interrupted when Harry or Henry—I don't know what his name is—came in and Mr. Watts.

Q. What took place?

A. Mr. Jewett offerred some kind of a paper or had it there at any rate and Judge Utz was dissatisfied with it. It was a lot of figures when it should have been an itemized statement of some sort and he went on to make some excuses why it was not what the Judge wanted, that he had left the work to be done by some clerk or agent or bookkeeper of the trust company and the clerk had not itemized it and he was begging further time in which to do it and the judge was insisting that the thing should be filed and ought to be done and to the best of my recollection said he would have to get it in that afternoon. There were some other matters discussed but I can not recollect what they were but at any rate in continued for some little while and I waited until I could get an opportunity to speak to Judge Utz about the Walters matter on which I had come and I was feeling badly and asked them all if they would not go out and take a drink in plain English and Judge Utz said he would go and Mr. Watts went along. Mr. Kelso declined and Brother D. A. said he was not feeling right and he did not care to go. Previous to going out I also heard Judge Utz tell Mr. Kelso to prepare an order removing the Receiver and appointing a new Receiver, Mr. Kelso, and then there was some discussion about the bond. Judge Utz was insisting on a large bond and Mr. Kelso seemed to think that a bond of three or four thousand dollars would be ample and went on to say that he did not have money or something to pay for an expensive bond and Judge Utz said "It does not come out of you personally, it will be charged as an item of expense against the estate" and then after that he told Mr. Kelso to go ahead and get up that order and that was the first opportunity I had to talk upon the subject I had come on and then not feeling well myself I invited them all out and Judge Utz accepted and Mr. Kelso said he had to draw his orders and D. A. declined.

Q. Who went out at the time that you did, if you remember?

A. To the best of my remembrance we all got up at the same time and I walked on out with Judge Utz and I am not sure whether Mr. Kelso went with us or not. I will say this to you—I heard Mr. Watts make the statement about Mr. Kelso having gone along but I won't be positive about that. I can not say, I don't know.

Q. Did Mr. Kelso come out of the door with you or not?

A. I can only say that my recollection is that he did.

Q. Did D. A. come out with you?

A. No, sir—I never saw D. A. after I went out of the room that afternoon.

Q. Where did you go?

A. We went to a cafe. I do not know the names of the streets in New Albany but it is about a block up on the same street with Hoerter & Hester's office.

By Mr. Hester: Pearl Street.

Q. How long did you three remain there?

A. Judge Utz left Mr. Watts and me seated there—I think it was after five o'clock. I do not know why he went or where he went to. My recollection is that he was disturbed two or three times while he was seated there with us.

Q. By the Court. The question is how long did you stay there?

A. Judge Utz left us shortly after five o'clock and after Judge Utz left Col. Jewett came in and sat down for a few minutes and then he and Mr. Watts and I went out front and while standing in front Mr. Jewett said something about having to leave, that he was going to have people at dinner that night or he was going to some house for dinner and we started up the street and met Mr. Zier and he walked as far as the corner and then I went up to the court house where I had last seen Brother D. A. and I did not find him and I looked at my watch coming down the steps and saw that it was close on to six o'clock and I saw a car standing at the corner and I ran past Mr. Watts and Mr. Zier who were standing there and called to Mr. Watts to tell D. A. that I could not wait for him any longer that it was six o'clock and I could not find him and I had gone.

Q. That was about six o'clock and you left?

A. Yes, sir.

Q. It took you about forty-five minutes to get home?

A. Yes, sir.

Q. Did you call your brother up after you got home?

A. Yes, sir. After I had eaten supper I called him up.

Q. About what time?

A. I can only figure it. To the best of my recollection the way I figure it it was somewhere between seven and half past seven.

Q. Did you find him at home?

A. Yes, sir.

Q. Did you know anything of the nature of the proceedings over there except that there was a Receivership suit pending in the Floyd Circuit Court in which you had a claim filed or represented an interest?

By the Court: Is there any charge that he had anything to do with this matter.

Mr. Smith. Nothing at all.

The Court. Then I don't see the materiality of it.

Q. Very well. Were you present at the interview in your office on Monday?

A. I was present for a short while in the afternoon.

Q. Now, tell what took place in your own way while you were there?

A. After I came back from dinner sometime in the afternoon, I won't be positive the time but I know it was after half past two I had occasion to go back to the room where my desk is and the letter press—on two or three occasions and while in there to copy a letter or after a paper I heard Mr. Kelso make a remark. I should say at that time there was in the room Judge Utz, Mr. Kelso and D. A. There was some talk about going to Indianapolis and then further along I heard Mr. Kelso say he thought Mr. Watts should raise the money to bear the expenses, possibly not those words but the substance. I had been standing close to the folding doors connecting the two rooms and Mr. Kelso turned to me and asked me what I thought about it. I said "I don't know anything about it Mr. Kelso but I would suggest that you ask Mr. Watts over here." I turned to D. A. and said "I think you ought to go and telephone to Mr. Watts." He left the room and then returned and said that he had. I am not positive whether I remained there then. I don't think I did but at any rate when I was back in there later J. R. Watts, John, we call him and W. W. came in and that same question arose again. I am not certain who put the question to Mr. Watts but I think it was D. A. said to W. W. Watts "Mr. Kelso thinks you ought to raise the money to stand this expense or to stand all the expense" and Mr. Watts seemed surprised and said "Me?" "I don't see why I should do it." Then it was explained to him that it was not intended that he personally should do it but that his client and he said: "I have no way of doing that. I don't see how I could ask it." Judge Utz said "Mr. Kelso I don't think the matter of expense is going to be as much as you think." Mr. Kelso seemed to think that it would amount to two or three or four thousand dollars according to my recollection. Judge Utz did not seem to think so and he said "I have some money in my

court—I don't remember how that conversation ended—I would not be positive.

Q. Did you hear anything about whether or not he and your brother D. A. Sachs were or were not to come to Indianapolis?

A. Yes, sir—I hear this the question was discussed about their coming and W. W. Watts addressed himself to Judge Utz principally and said as I understood it "Up to now I had fully determined to go to Indianapolis but since you feel that I ought not to go, I don't know exactly what to do" and to the best of my recollection but Utz and Kelso said they preferred that D. A. and W. W. Watts should not come. Then John Watts the younger brother said "Gentlemen, I don't know. It throws a look about W. W. that I don't like. It seems to me that he ought to go but you are all much older than I am" or substantially that. I don't think that matter was determined while I was there.

Q. Did you hear any statement on the part of your brother D. A. to the effect that he would not go because he would have to testify against his friend Watts and before he would do that he would go to Jamaica or Texas or California or some other parts?

A. He made no such statement in my presence or hearing.

Q. Did you hear any statement by Judge Utz in substance to the effect that he could not see Mr. Hester but that he would have Mr. Stotzenberg see him.

A. I only have an indistinct recollection of it. I would not like to make any positive statement as to what the conversation was.

Cross-examined by Mr. Kealing.

Q. Did there seem to be any discussion on the part of Mr. Sachs and Mr. Watts as to whether they should come to Indianapolis to answer the citation of the Federal Court?

A. From the remark I heard, there evidently must have been some talk about it.

Q. Did they hesitate to come?

A. They were at that time.

Q. Why were they hesitating?

A. I could not tell you.

Q. Did they give any reasons why?

A. The only thing I know was from what I gathered there that Judge Utz did not want them to come.

Q. I asked about them. They knew and you knew that they had been cited?

A. I think I did.

Q. What if anything did they give as reasons why they should not come?

A. I did not hear.

Q. Then the whole sum and substance of the conversation was that the two men that had been cited were trying to convince the Judge and Kelso that they ought to come and the Judge and Kelso were trying to convince them that they ought not?

A. My own idea of it was this way—

Q. Can't you answer?

A. I cannot say that they were trying to convince the Judge and Kelso that they ought or that the Judge and Kelso were trying to convince them that they ought not.

Q. Did you not say that Kelso advised them not to come?

A. He said he would prefer that they would not.

Q. Did you not say the Judge was trying to convince them that they ought not to come?

A. The Judge said he would prefer they would not come.

Q. You are a lawyer?

A. Yes, sir.

Q. I understood you to say that Judge Utz said that he had some money in this proceeding of the M. Zier & Co. receivership?

A. Yes, sir.

Q. Out of which he might pay the costs and expenses of these people to Indianapolis in these contempt cases?

A. Yes, sir.

Q. Did that strike you as a lawyer with being a peculiar proposition?

A. The whole thing struck me as being peculiar.

Q. You as a lawyer knew he had no right to do that?

A. That he had no right to use the money for that purpose? No, sir—I did not.

Q. Kelso did say to these people that they had promised to pay the costs and expenses?

A. No, sir: he did not.

Q. How did the question come up about the costs?

A. I can only tell you as I have said that I just heard the the latter part in which he said he thought Mr Watts ought to raise the money to pay the expenses.

Q. What time on Friday did you go to New Albany?

A. I think I reached there shortly after three o'clock.

Q. You proceeded directly to the court room?

A. I did.

Q. Had you before that day met Judge Utz personally?

A. Yes sir.

Q. Did you know him?

A. Yes sir.

Q. Did you know Mr. Kelso before that?

A. I met Judge Utz and Mr. Kelso at that creditors meeting. That was the first time I met them.

Q. You went to the court house for the purpose of transacting your boiler business?

A. Yes sir.

Q. When you went to the court room you found they were engaged on some other matter?

A. They were in chambers on some other matter.

Q. You went to the Judge's room?

A. Yes sir, and knocked at the door.

Q. How long did you wait until you presented your matter? Or did you present your matter?

A. I did not have an opportunity. Mr. Jewett and Mr. Watts came in.

Q. Did you present your matter that afternoon at all?

A. Yes sir.

Q. At what time?

A. On the way out the street to this cafe.

Q. Not before?

A. No sir, I had no opportunity.

Q. You had the opportunity to invite the Judge to take a drink?

A. Yes sir.

Q. Why didn't you tell him in the court house that you would like to present your matter and wait until you could do it?

A. My recollection is I did tell Judge Utz what I came for.

Q. When?

A. The first opportunity I had to ask him if he would not go along to the cafe?

Q. To present the matter?

A. Not for that purpose alone but to give me an opportunity.

Q. To present the matter?

Was that what you invited him to take a drink for?

A. No sir I invited to take a drink.

Q. I will ask you when you first told him this business that you came on. Was it in the court house or not?

A. I think it was up in the chambers.

Q. What did you say and what did he say to you?

A. I told him I had come over to see about the Walters contract and my recollection is he said something to me that it would be all right or it would be carried out and that is the best of my recollection.

Q. That was in the court house?

A. Yes sir.

Q. Why did not you go home?

A. Because I wanted to talk with Judge Utz further. The matter was not settled with me. It was very indefinite. I had been sent to find out about it.

Q. Did you talk further with him?

A. Yes sir.

Q. Where?

A. On the way out or at the bar room or cafe.

Q. Which was it a bar room or a cafe?

A. Either way you call it.

Q. You know a bar room from a cafe?

A. This was a cafe adjoining a saloon where tables were set.

Q. I don't know, I ask you if you know. What did you say to him at that cafe or bar room what ever it was?

A. I did not get any more definite answer.

Q. What did you say to him?

A. Now if your Honor please I ask the court for protection. I want to answer him, but he asks in such a manner—

The Court: If you want to answer, answer.

The question was read to the witness.

A. I told him the Walters were very much put out and distressed about the matter so much so that they had got me out from home when I felt that I ought not to be out and I wanted to know if he couldn't hurry the matter up, that it was being delayed and the receiver was not doing the work as he had promised to do and he assured me it would be completed and I did believe what Judge Utz said, but I didn't get my work.

Q. When you went over to that saloon, Mr. Watts went with you?

A. Yes sir.

Q. You and the Judge and Mr. Watts went from the court house to the saloon?

A. Yes sir.

Q. Judge Utz was in a good humor?

A. I can't say that he was or was not. From the best of my recollection he appeared not to be in good humor.

Q. How many drinks did he take around there?

A. I think while Judge Utz was there there were three drinks taken possibly.

Q. And did I understand you to say that he was not in good humor?

A. Yes, he did not seem to be in the very best frame of mind.

Q. How long did you stay together at that place?

A. Judge Utz left us some time shortly after five o'clock.

Q. What time did you go to that cafe?

A. I should say between half past three and four o'clock, but I could not state exactly.

Q. You three were there from an hour to an hour and a half?

A. I think we were.

Q. What were you talking about?

A. I could not tell you now.

Q. Were you telling stories?

A. I could not tell the conversation.

Q. Nothing at all that occurred there?

A. Nothing more than I have related.

Q. You don't mean to say that took an hour and a half to tell that?

A. No sir.

Q. You have no recollection of anything that occurred.

A. No definite recollection.

Q. Where was D. A. Sachs at that time?

A. I could not tell you.

Q. You left him at the Court room in Judge Utz's chamber?

A. In Judge Utz's chamber.

Q. Then after the Judge went you and Mr. Watts stayed at this cafe until dark?

A. Till dusk I will put it.

Q. It was about six o'clock?

A. No sir, it was possibly twenty minutes or a quarter to six.

Q. What were you waiting for after Judge Utz left and your business was transacted?

A. Shortly after the Judge left Col. Jewett came in through the archway there and he sat down or rather was invited by Mr. Watts and he sat down and took a drink and then there was a discussion there about some case of Mr. Watts' on demurrer or something of that kind and they ran along in the conversation from one thing to another until we left somewhere about twenty minutes or a quarter to six.

Q. All three left together?

A. Yes, sir.

Q. Col. Jewett, Watts and yourself?

A. Yes, sir.

Q. Jewett stayed until you went to Louisville?

A. No Jewett stood with us for a few minutes and then excused himself and said he was going out to dinner that night or would have people at his house.

Q. He stayed until you left the cafe?

A. Yes, sir.

Q. You did not go back to the court house any more?

A. Yes, sir.

Q. To see whom?

A. To find D. A.

Q. Was he there?

A. I think not.

Q. The last thing you heard before you gentlemen went to the cafe, was that Judge Utz told Mr. Kelso to go to his office and prepare the order for the removal of this receiver?

A. Yes sir that is what I heard.

Q. And Kelso proceeded to his office so far as you know?

A. I could not tell you where he went.

Q. I understood he left the court room with you? Did you say that?

A. I said I would not be positive.

Q. After the Judge had said that to Kelso—that was said in the presence of Mr. Watts and Mr. D. A. Sachs?

A. Yes sir.

Q. Then you left Mr. D. A. Sachs in the court house and you don't know where he was that afternoon?

A. I do not after that.

Q. What do you say the discussion was in the court house at three o'clock after you say you got there, what was it about?

A. Henry Jewett or Harry Jewett, or whatever his name is—

Q. Call him Harry.

A. He had some kind of a report that it seemed he was to file and the judge was expecting, and he was wanting further time to file the report. The judge did not want to except it because it was not itemized and did not have vouchers.

Q. What part was Mr. Watts taking in that?

A. I could not say that I heard him say anything.

Q. Mr. Watts was the attorney for the receiver?

A. I do not know.

Q. What part was Mr. D. A. Sachs taking?

A. Let me correct that. I said I did not know. I think he was, I think I do know that.

Q. Was Mr. Watts taking any part in the discussion?

A. I don't think I heard him say anything.

Q. Was Mr. D. A. Sachs?

A. Not to my best recollection.

Q. Did you ask D. A. Sachs what he was doing there?

A. No sir.

Q. Do you know what he was doing there?

A. No, sir.

Q. You knew he had not been attorney for anybody in that proceeding did you not?

A. I knew I was attending to the Walter business and I did not know of any business he had.

Q. You knew he was not there on the same business you were?

A. He was not so far as I know.

Q. I understand your firm is arranged so that one partner takes one thing and another another?

A. Yes sir.

Q. You had the Walter's business?

A. Yes sir.

Q. You knew he was not on that?

A. Yes sir.

Q. Did it surprise you to find him there in that case?

A. No I cannot say I was surprised.

Q. Did you make any inquires of him why he was there?

A. And no sir.

Q. And he said nothing to you about it?

A. No sir.

Q. Who accompanied you back to Louisville?

A. Nobody.

Q. You did not see your brother or Mr. Watts after you left the cafe?

A. No Sir.

Q. Were you there at New Albany on Saturday?

A. No sir.

Q. That was the only time you were there?

A. That Friday afternoon.

Q. Did you know that your brother was back on Saturday?

A. I have no recollection now of knowing it.

Q. Where were you on that Saturday following your visit to New Albany?

A. I could not tell you—I was in the city of Louisville.

Q. Have you not an idea of what you were doing?

A. I have an idea if that will answer.

Q. Have you an impression?

A. I was attending to business or at my home.

Q. Were you sick?

A. I think not.

Q. Did you know that your brother was going back to to Louisville the next day, the Saturday following the Friday you were there?

A. No sir.

Q. Did you inquire over the telephone when you talked to your brother as to what he had been doing at New Albany?

A. No sir.

Q. Did you inquire of either of your brothers Saturday as to what D. A. Sachs was doing there on Friday?

A. I don't think I did.

Q. Did you know that your brother Mr. Sachs was representing Mr. Watts there in his trouble with the judge?

A. I cannot say whether I did or not.

Q. Did you know that your brother had been employed or solicited by Mr. Watts to go to New Albany to square him, Mr. Watts, with Judge Utz?

A. When?

Q. Either Thursday, Friday, or Saturday.

A. I could not tell you when I learned it, but I certainly did not know it when I was over there that Friday afternoon.

Q. You did not know when you did learn it?

A. No sir.

Q. You were not called in to consult Monday when these contempt proceedings of the Federal Court were up?

A. No sir.

Q. You accidentally came in?

A. My desk was in there and the letter press.

Q. Did you know what the consultation was for?

A. I presume I did.

Q. Did you go in purposely to hear what was being said?

A. No sir.

Q. But you happened in there two or three different times and heard these things?

A. I was forwards and backwards, two or three times, yes sir.

Q. For instance you heard John Watts ask the question of Mr. Kelso and Judge Utz as to whether your brother Mr. Sachs had had any part in advising these people in this receivership matter?

A. I made no such statement.

Q. You never heard anything of that?

A. I did not.

Q. What was it you heard John Watts say? Anything?

A. About what?

Q. About anything?

A. I heard John Watts say he did not think his brother W. ought to remain away, that he was a much younger man than the balance of them and intimated that he felt a little out of place in advising contrary to what Judge Utz and Mr. Kelso had requested.

Q. Did you hear Judge Utz say anything at that meeting on Monday?

A. I heard him say that he preferred that they would not go.

Q. Anything else?

A. I heard Judge Utz say to Mr. Kelso, as I told you a little while ago, he did not think the expenses would be as great as Mr. Kelso was expecting and he had some money in his hands or the court.

Q. Did you hear Mr. Kelso say what lawyers they should get in Indianapolis? Mention any names?

A. No sir, I was not in there at that time.

Q. While you were in the room, you never heard your brother say that he would prefer to Jamaica to going to Indianapolis because he would have to testify against Watts?

A. No sir.

Q. How much of the time do you think you were in that room when the consultation was going on?

A. I could not give you any idea, I don't know.

Q. How many times were you in there?

A. I think I was in the room where they were just one time.

Q. Morning or afternoon?

A. Afternoon.

Q. That conference lasted nearly all day?

A. There was some one or the other of them there pretty much all the day.

Q. Don't you know that they came at ten o'clock and stayed until nearly noon and went out to lunch and came back and stayed nearly until night?

A. I could not say when they came or left. I was not there either time.

Q. When you left, did you leave them there?

A. Yes sir.

Q. What time did you leave them?

A. I do not know what time of the day that was.

Q. What time did you usually leave?

A. They had left before I left for my supper.

Q. Did you see them go?

A. No sir.

Mr. Fairleigh: My understanding is that we offered in evidence the files of the bankruptcy proceedings. And you offered in evidence the record of the Floyd Circuit Court in the case of Ryerson & Son against M. Zier.

Mr. LaFollette: I offered that part of the two transcripts showing the entry of the 14th of February. You said at the time that you wanted to offer all of it.

Mr. Fairleigh: I do that now. I offer exhibit B with the response of Watts, with the understanding that the bankruptcy proceedings have been filed.

The defendants here rested.

W. C. Utz, recalled for the government and examined by Mr. Kealing testified as follows:

Q. You have been on the witness stand before in this case?

A. Yes sir.

Q. I will ask you to state to the court what if anything D. A. Sachs said on Saturday morning Feby. 21st, at your office at the court house at New Albany about the militia being called out.

A. He asked how it was done.

Q. State all that was said.

A. My recollection is that Mr. Kelso and I were in the office and D. A. Sachs was sitting next to the window next

to Spring Street, side of the court house, and he asked me, "how do you call out the militia?" I said, "why do you ask that?" And he said, "When I go into anything you know I go to the end."

Q. What, if anything, did you hear him say about being a state's rights man?

A. I heard him make that statement a number of times.

Q. Tell what he said.

A. He said he was a great state's rights man.

Q. State whether he said in that connection anything about calling out the militia?

A. Yes sir.

Q. You may tell the court whether at Mr. Sach's office in Louisville you said to Mr. Sachs or Mr. Kelso or any one in that office that you had money in your hands or in the hands of your receiver out of which you could pay the expenses of the people coming here to answer these contempt proceedings?

A. I don't think I said that. There was some discussion about that. There was a great deal of talk and I do not recall all that was said.

Q. I will ask you to state to the court if at that consultation at Mr. Sachs' office on Monday, the 23rd of February, at which you say you were present, J. R. Watts asked you whether his brother W. W. Watts had in any advised counsel or had anything to do with the taking of the property from the Federal Court receiver and you answered that he did not?

A. The form of the question is in, I would say no.

Q. If you had any conversation on that, tell the court what it was.

A. I did. Mr. John R. Watts, young Mr. Watts, was standing at the end of the table, and he called me to one side, I was sitting in a chair, and I got up and walked to where he was, and he asked me this question if his brother W. W. was the attorney for Mr. Kelso in the receivership and I said no, and that was all that was said on that subject.

Q. Was anything said about your making out affidavits and giving them to Mr. Watts on that subject?

A. By whom?

Q. By John Watts or anybody else.

A. No sir.

Q. I will ask you to state if at that conference on Monday at Mr. Sachs' office you said to the people in that conference that you preferred that W. W. Watts and D. A. Sachs would not come up here to answer the citation of this court?

A. No sir, I don't think I said that. There was considerable discussion about that. In view of what Mr. Watts

had said that the Judge of this court seemed angered at him. I don't think I said it that way. I might have said, if I said anything that it might be best at this time not to come. I may have made that statement.

Charles D. Kelso, re-called and examined by Mr. Kealing, testified as follows:

Q. What if anything did D. A. Sachs say to you or in your presence on Saturday the 21st of February, at Judge Utz's court room about the militia or calling out the militia?

A. He inquired of the judge as to the statute regulating the calling out of the militia and the Judge asked him why he asked that question, and he said when he got into a thing he went to the end of it.

Q. Is that all he said?

A. That is all I can remember.

Q. What if anything did he say about his being a great state's rights man?

A. He said he believed in state's rights, that he was a great man for that principle.

Q. I will ask you if it is true that at Mr. Sachs' law office, in Louisville, on Monday, at the time you were consulting over the citations sent from this court, you were asked the question by John Watts as to whether W. W. Watts had in any way advised or assisted in the prosecution of this receivership in the Floyd Circuit Court and you answered him that he had not?

A. No sir.

Q. Was anything of that kind said to you?

A. He put a question of that kind and I said that Mr. Watts was not my attorney but that I had heard Mr. Watts express opinions about the law of the case quite frequently during the time this matter was up.

Q. You remember the invitation that one of the Sachs gave to go to the cafe on that Friday afternoon?

A. I don't remember the invitation, but I know they went to Matt Claire's saloon.

Q. On that afternoon you may state whether D. A. Sachs remained in the court room or whether he went to your office?

Question objected to and objection sustained as having been asked and answered.

Mr. Kelso: I desire to make one statement about the relations between myself and Mr. Stotsenberg. They are very cordial.

Mr. Smith: We object, he has stated that.

A. Our relations are very cordial and he is now attending to my business. His father is staying at my office.

Mr. Miller: We object to that. He stated that identical fact.

The Court: He may state it again. I do not remember it.

Mr. Kealing: We have subpoenaed Mr. Ruth to rebut the statement made by Mr. Sachs that he never was in this plant and we have sent for the stenographer in Mr. Kelso's office and have sent for two deputy clerks, and they will be here in the morning.

Mr. Miller: I don't know how closely your Honor observes the rules of evidence in a matter like this, but with reference to the question of Mr. Sachs being in that place, they brought that out in their original case and then was the time to put in their entire evidence on that subject.

The Court: Strictly speaking, that may be true, but I will hear the evidence on that point. I want to know myself the truth about that.

The Court thereupon adjourned until tomorrow morning.

FRIDAY, MARCH 13, 1903.

MORNING SESSION.

The Court met pursuant to adjournment, present the same as on yesterday.

Fred S. Ruoff, a witness called on behalf of the Government in rebuttal, being first duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. LaFollette:

Q. State your name to the Court.

A. Fred S. Ruoff.

Q. Where do you live?

A. New Albany.

Q. Are you the gentleman who acted as watchman at the M. Zier & Company plant under the direction of Mr. Kelso when he was appointed Receiver?

A. Yes sir.

Q. Are you acquainted with Mr. D. A. Sachs?

A. Not until that day.

Q. But you know him do you?

A. Yes sir.

Q. The gentleman that sits back there?

A. Yes sir.

Q. You may tell the Court if you were at the M. Zier & Company plant on Saturday and on Friday.

A. On Saturday.

Q. On Saturday were you first there?

A. Yes.

Q. The 21st of February?

A. I don't remember the date exactly.

By the Court:

Q. Just a moment: It was the day, the next day—

A. (Interrupting) The first day I had taken possession.

By Mr. LaFollette:

Q. The first day you had taken possession under the direction of Mr. Kelso?

A. Yes sir.

Q. You may tell the Court whether or not Mr. Kelso was at the plant on that day.

A. Him and Mr. Sachs came there I expect along between two and three o'clock.

Q. When you say Mr. Sachs you may state which Mr. Sachs you mean.

A. Mr. Sachs right there.

By the Court:

Q. Mr. D. A. Sachs the defendant here?

A. Yes sir, Mr. Kelso introduced me to him.

By Mr. La Follette:

Q. About what time in the day?

A. I judge along about two or three o'clock.

Q. Was there any statement made by Mr. Kelso in his presence or by Mr. Sachs himself about the plant?

A. Well they were discussing the matter and Mr. Sachs said there was very little left for us yet.

Q. Very little what?

A. Very little left.

By Mr. Kealing:

Q. For us yet?

A. For us yet. Yes sir, that is about all. They were discussing other matters; I didn't pay much attention to it.

By Mr. La Follette:

Q. You may state whether they went through the plant.

A. They went through over the platform; they didn't go off the platform very much; probably half the shop.

CROSS-EXAMINATION.

By Mr. Fairleigh:

Q. Tell the Court whether you are the same person who was cited for contempt in this case.

A. Yes sir.

Q. You were found guilty of contempt were you?

A. Yes sir.

Q. And put in jail therefor.

A. Yes.

Q. This was Saturday afternoon about two or three o'clock.

A. Somewhere around between two and three.

Q. You are certain about the hour?

A. No sir I wouldn't be certain about the hour.

Q. How certain are you about that?

A. Just about near that time.

Q. Was it between two and three somewhere.

A. I think it was between two and three.

Q. It couldn't have been before two?

A. I couldn't say; along between two and three; I didn't look what time it was.

Q. Did you take dinner that day anywhere?

A. I took dinner there at the shop.

Q. Had it with you?

A. Yes sir; brought to me.

Q. You had never seen Mr. Sachs before?

A. No sir.

Q. Did you ever see him since?

A. Yes sir.

Q. Where?

A. In the Court.

Q. When?

A. Monday.

Q. Of this week?

A. Yes sir.

Q. You never saw him from that time until you saw him at Indianapolis on this trial?

A. Yes; not from the time I seen him at the plant.

Q. What time had you been put in charge as watchman?

A. I was notified on Friday night before the Saturday about nine o'clock to report at Mr. Zier's at 7 o'clock in the morning.

Q. You came in the morning, Saturday morning at seven o'clock?

A. Yes sir.

Q. You had never heard of Mr. Sachs before had you?

A. Not that I know of.

Q. How long did Mr. Sachs and Mr. Kelso stay there?

A. I guess along about ten or fifteen minutes, something like that; I didn't take no particular note of the time they came there or what time they were there.

Q. Where are those boiler yards situated with reference to this Court House.

A. I judge about three blocks to the Court House.

Q. In what direction?

A. It is kind of Northwest.

Q. Do you know how they came there, whether they rode on the street car or walked?

A. I couldn't say.

Q. Where did you first see them after they entered or how they entered it?

A. They came there to the door; the door was locked.

Q. Did they knock on the door?

A. Yes sir; they called me. I recognized Mr. Kelso's voice when they called.

Q. Do you think there is any possibility of a mistake about the identification of Mr. Sachs? That you might be mistaken about the person?

A. No sir.

Witness excused.

William F. Ruoff, a witness called on behalf of the Government in rebuttal being duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. LaFollette:

Q. You may state your name to the Court.

A. William F. Ruoff.

Q. Where do you reside?

A. New Albany, Indiana.

Q. Are you the deputy clerk in the Clerk's office of the Floyd Circuit Court?

A. Yes sir.

Q. How long have you served in that capacity?

A. As a sworn deputy for more than eight years; in the office for about eleven years.

Q. You are acquainted with Mr. C. D. Kelso?

A. Yes sir.

Q. Did you know of the fact of the case pending in your Court of Ryerson & Son against M. Zier & Company?

A. Yes sir.

Q. You may state to the Court whether or not you made the order book entries.

A. I made all of them.

Q. You are acquainted with Judge Utz of the Circuit Court?

A. Yes sir.

Q. Do you know Mr. W. W. Watts?

A. Yes.

Q. Do you know D. A. Sachs?

A. Yes sir.

Q. You may state to the Court if you remember the occurrence of Mr. W. W. Watts and Mr. D. A. Sachs coming over to New Albany and appearing before the Judge of the Floyd Circuit Court during the week of the 18th, 19th, 20th, and 21st of February last.

A. Did you ask me if I remembered that?

Q. Yes.

A. Yes sir I do.

Q. You may tell the Court if you can the first day that you now call to mind of their being present before Judge Utz after the 18th of February.

A. I am most sure it was the 19th.

Q. Do you remember whether or not you was present on the 18th when they were before Judge Utz, if they were?

A. Not that I remember of; I was in the office but I have no distinct recollection about the matter; never knew about this proceeding at that time or any jurisdictional matter with the Floyd Circuit Court.

Q. Do you remember then that they were there on the 19th which would be Thursday of that week.

A. Yes sir I remember that.

Q. You may tell the Court what you remember about that? About what hour you remember they were there and as definitely as you can the occurrences?

A. Judge Utz asked me to come up to his office about half past eight o'clock or possibly nine, and when I got up there I saw Mr. Sachs there; he was talking to the Judge; the Judge introduced me to him if I remember right about that. I think the Judge introduced me to him; he was discussing the matter of the suit of Ryerson & Son against Zier & Company.

Q. Was there anything being said about the bankruptcy proceedings or about the appointment of Mr. Connor as Receiver in the Bankrupt Court?

A. Yes sir.

Q. You may tell the Court what was said about that if you can remember?

A. Well they were just discussing the fact that Mr. Hester came up here I think and asked for the appointment of a Receiver in this Court, and probably—well they were discussing the matter of the Receiver appointed by this Court and discussing the matter of the suit of Ryerson & Son in our Court.

Q. Well who else was there during the meeting if you know? Well, during the forenoon if you can remember?

A. I think only Mr. Kelso to the best of my knowledge besides Mr. Sachs.

Q. You do not remember about Henry Jewett coming in and talking about turning over the property, do you?

A. Well yes sir I do.

Q. Well you may state to the Court whether or not either on that day or on the day following, which would be Friday, there were any orders made which you were directed to enter of record?

A. Well in the first place I think there was an order made holding Mr. Watts in contempt of the Floyd Circuit Court;

the next one holding the New Albany Trust Company in contempt, and these were all proceedings as of the 20th; but I think the proceedings in the first two I have named were probably made on the 19th; then there was an order made for the removal of the New Albany Trust Company which was filed by me and entered of record and the qualification of Mr. Kelso as Receiver and an order showing the refusal of Mr. Connor to turn over the property, and the Judge issuing a summary writ against Mr. Connor to turn over the property—or of the Sheriff to take the property. I think that was all.

Q. Now you may tell the Court what was said if anything about those orders and in connection therewith by either Mr. W. W. Watts or Mr. D. A. Sachs before Judge Utz, or in your hearing at any time.

A. Well they were discussing the carrying out of all these orders, all the parties present, Mr. Sachs and Mr. Kelso and Judge Utz. I dont remember of Mr. Watts having been there but I think once; I don't think that he took any hand in the proceedings at all that was noticeable, that I could notice. If he was he didn't say anything. I don't remember him saying anything particularly.

Q. Did Mr. Sachs say anything about it?

A. Yes sir.

Q. Can you call to mind anything he said?

A. Well he discussed carrying out all these orders; his discussion bordered upon the contents of all of these orders; in fact the discussion was along these lines before the orders were made, before they were drawn up.

By the Court:

Q. What orders do you refer to?

A. These vacation orders.

Q. Were those orders with reference to taking the property from Mr. Connor?

A. Yes sir.

Q. And the summary writ issued to the sheriff?

A. Yes sir.

By Mr. LaFollette:

Q. Do you remember of having been furnished with an addition to be entered in connection with the order book entry of February 14th, the last day of the term, noting the withdrawal of C. D. Kelso as attorney of record for certain parties?

A. Yes sir.

Q. You may state who furnished you with that entry.

A. Mr. Kelso; he wrote it also; it was in his handwriting.

Q. You may state whether or not you entered that?

A. I did enter it, yes sir.

Q. You may state who was in company with Mr. Kelso at the time that he prepared and furnished you, or when he furnished you that order to be entered?

A. Mr. Sachs and Judge Utz.

Q. Do you remember when that was furnished you—

By the Court:

Q. (Interrupting) Wait just a moment. Read that question and answer.

The preceding question and answer were read by the reporter.

Q. The Court: Well which order to be entered? Does he mean that alteration?

The Witness: Yes sir, that is the one I speak of. That was made before the record was signed by Judge Utz. It was on the last day of the term and generally the proceedings of the last day of the term are fifty or one hundred pages long; I couldn't get them up on the last day of the term.

By Mr. LaFollette:

Q. That is you mean to say that the order book entry had not yet been signed by the Judge?

A. No sir.

Q. And this addition was made to it on the 20th of February?

A. Yes sir.

Q. And written in, and when finally signed up made to appear as part of the business done on the 14th?

A. Yes sir I take it that way.

Q. The addition which relates to the withdrawal of Mr. Kelso was in fact made and handed to you on the 20th of February was it not?

A. I think it was the 20th; yes sir.

Q. Do you remember what time in the day and upon what day the writ was given out from your office addressed to the Sheriff directing him to take the property of M. Zier & Company and deliver it to Mr. Kelso?

A. Yes sir, that was on Friday the 20th of February.

Q. At what time in the day?

A. Why it was late in the evening; I don't remember just exactly the time; probably six o'clock.

Q. You may state to the Court whether or not Mr. Sachs had gone away from that office before that was issued?

A. I think he did yes sir.

Q. You may tell the Court whether it had been talked of while he was there at your office?

A. It wasn't discussed in our office; it might have been discussed up in the Judge's office.

Q. Whether you knew of it? Whether it was in fact talked of in your presence when Mr. Sachs was present?

A. I think it was. I have no distinct recollection on that but it was all in connection with these other proceedings, and that is my recollection of it.

Q. Mr. Ruoff do you remember that there was filed in the Floyd Circuit Court an intervening petition of Frederick D. Connor, Receiver in bankruptcy, asking that the property of M. Zier & Company be turned over to him as such Receiver.

A. I think I do; yes sir.

Q. Who appeared in connection with that petition? What attorneys?

A. Now in relation to that there were two orders made as of February the 14th I think on that matter. You will find there was a small order made on the last day of the term, the last entry on that day following that addition to that record and I think that shows the filing, or Mr. Connor asking leave to intervene in the Ryerson case in the Court and asking that the property be turned over to him as Receiver.

Q. What particularly I wanted to know is you may tell the Court whether or not in connection with that petition and order there was anything said by Mr. D. A. Sachs on the 20th, on the 19th or 20th of February in reference to any change in that in any way?

A. Now which one do you speak of? There was a long order made as of the 14th I think showing the appointment of Mr. Connor as Receiver?

Q. Well either one of those orders?

A. Well that small order was made on the 20th I think, drawn up by Mr. Kelso, and Judge Utz and Mr. Sachs were present when it was drawn up and I think took part in all the discussion.

Q. That is the one as to Mr. Kelso withdrawing?

A. No, that is the order drawn up showing that Mr. Connor asked leave to intervene.

Q. Now was there any change made in that or anything said about it by Mr. Sachs on the 20th?

A. In the other order there was no change made in that at all because it was drawn on the 20th?

Q. The other one?

A. In the other one there was no change made in that at all that I know of.

Q. Was there any talk between Mr. Sachs and Mr. Kelso about it in your presence?

A. I don't remember.

Q. You may also state to the Court whether or not you had any conversation with Mr. D. A. Sachs about the M. Zier & Company plant as to whether or not he had seen it and what it was worth?

A. He stated to me on the corner of Pearl and Spring Street in New Albany Saturday evening about six o'clock that he had been there and he didn't think what was out there was worth five thousand dollars.

By the Court:

Q. That was Mr. D. A. Sachs?

A. Yes sir.

Cross-examination by Mr. Fairleigh:

Q Mr. Rouff you are the son of the Mr. Rouff who has just testified.

A. Yes sir.

Q. You are the Deputy Clerk for the Floyd Circuit Court?

A. Yes sir.

Q. The Court adjourned on the 14th of February?

A. Yes sir.

Q. Thereafter you were quite busy getting up the orders of the Court of the last day?

A. Yes sir.

Q. Your whole time was occupied thereabout?

A. Yes sir.

Q. It was your duty to enter orders upon the Order Book?

A. Yes sir.

Q. Many of them were left over from the last day?

A. Yes sir.

Q. To be entered on the last day?

A. Yes sir.

Q. And which had been ordered before the adjournment of the Court?

A. Yes sir.

Q. You have said, or from what you have said I take it that Mr. D. A. Sachs was present at the time the order was made by Judge Utz directing the issuance of a writ to the Sheriff of Floyd County commanding him to take the property from Mr. Connor Receiver and turn it over to Kelso Receiver. Now is it true that at the time that order was made by Judge Utz Mr. D. A. Sachs was present?

A. To the best of my recollection he was.

Q. The order for that writ was entered late that afternoon or evening?

A. It was not entered till several days after; it was filed that day.

Q. When was it filed?

A. Filed on February the 20th.

Q. Late in the afternoon?

A. Yes sir I think so; possibly two or three o'clock; it might have been that or sometime during the afternoon.

Q. Do you know it was five or six o'clock?

A. The order for the issuance of the writ?

Q. Of the writ.

A. Possibly it was.

Q. What time do you leave your office in the afternoon usually?

A. Well from five to half past, sometimes six.

Q. Do you remember to have been there later that afternoon than usual?

A. Yes sir.

Q. Who asked you to remain there?

A. Well the Court, Judge Utz was still upstairs and it is always customary for the Clerk to wait till the Court goes away.

Q. Precisely. Now upon reflection can you say that you are certain that Mr. Sachs was present when that order was filed for the issuance of the writ?

A. Well I don't know that I could say certain that he was present because Mr. Scott was out of the office and I had to attend to the duties of the office and to the Judge's office too. The Clerk's duties and that; I had to be between both of them the whole time.

Q. So that you can't be certain about that at all?

A. At the time this order was made?

Q. Yes this order for the issuance of the writ?

A. I think I was present but I wouldn't be certain, too certain about it; I thought I was certain.

Q. But would you be certain that Mr. Sachs was there when that order was entered?

A. I think he was there the entire day of the 20th.

Q. Do you mean all the time that the Clerk's office was open?

A. Yes sir.

Q. And didn't leave until the Clerk's office was closed?

A. I think not.

Q. Are you at all certain about that?

A. I am absolutely sure he was there the entire morning, and I think he was there in the afternoon.

Q. He was there in the afternoon I have no doubt, but I am trying to fix the fact as to whether he was there at the time the order for the issuance of this writ was made. Could you at all be certain about that?

A. To the best of my recollection I think he was.

Q. Now going back to this addendum made to the order of the 14th, that long order?

A. Yes sir.

Q. I understood you to say that the matter of that addendum was brought to you by Mr. Kelso and that it was in Mr. Kelso's handwriting.

A. Yes sir, it was handed to me by Mr. Kelso in the Judge's office.

Q. It was not typewritten?

A. No sir.

Q. Are you certain that Mr. Sachs was present when that addendum was handed to you?

A. Yes sir I am sure he was there.

Q. Are you certain he knew anything about it?

A. He was present.

Q. That is all you know?

A. Yes sir, he was talking with Mr. Kelso and the Judge about it?

The Court: About the addendum?

By Mr. Fairleigh?

Q. About what?

A. About this order that Mr. Kelso wrote.

Q. Who else was present?

A. I think myself and Judge Utz and Mr. Kelso and Mr. Sachs were all there.

Q. Can you say what was said by Mr. Sachs about that?

A. No sir I couldn't; I couldn't tell.

Q. Where do you say you met Mr. Sachs on the street when he told you that he had been to the M. Zier & Company works and that they were not worth more than five thousand dollars?

A. On the corner of Pearl and Spring Streets.

Q. On what day was that?

A. Saturday evening about six o'clock.

Q. Late?

A. Six o'clock.

Q. Late that evening?

A. Yes sir.

Q. Who was with him?

A. Mr. Watts.

Q. Who else?

A. That was all.

Q. Was Mr. Zier standing there?

A. No sir.

Q. Was Mr. Kelso there?

A. No sir.

Q. What were they doing on the corner?

A. Waiting for a street car I think to go to Louisville.

Q. You didn't see Mr. Kelso there at all?

A. No sir he wasn't there. Possibly he might have left a few minutes before that. I think he had left a while before that. They were standing up there talking and we had just come out of the Court House.

Q. When did he say he had been to the works?

A. He said that at six o'clock Saturday evening.

Q. I know; when did he say he had been out to the works?

A. I judged from his conversation it was sometime during the afternoon.

Q. Was Mr. Watts present and Mr. Sachs and you and nobody else?

A. No sir.

Witness excused.

Edgar B. Martin a witness called on behalf of the Government in rebuttal being duly sworn testified as follows:

Direct-examination. Questions by Mr. LaFollette:

Q. Mr. Martin you may state your name to the Court.

A. Edgar B. Martin.

Q. Where do you live?

A. New Albany.

Q. You may state whether or not you are the Deputy Clerk in the Floyd Circuit Court.

A. Yes sir.

Q. You may state whether you were about the office on the 19th, 20th and 21st of February last.

A. Yes sir.

Q. You may state whether or not on either of those dates probably on Friday the 20th you were called up to Judge Utz's room.

A. On Friday the 20th about half past one I was called to his room.

Q. Who was present at that time?

A. Mr. Kelso, Judge Utz and Mr. D. A. Sachs and Mr. Rouff.

Q. You may state to the Court what was being talked of, what was said while you were in the room in regard to the matter or any matter connected with the Receivership of the M. Zier & Company plant at New Albany.

A. I know after I got in there they began discussing the contempt proceedings against Mr. Connor Receiver and Mr. Hester.

Q. Mr. Connor the Receiver appointed by this Court?

A. Yes sir.

Q. Of the M. Zier & Company plant?

A. Yes sir?

Q. Now you may state what was said.

A. Mr. Sachs was asking in relation to affidavits and to prepare the information and affidavits and Mr. Kelso says, "Who will make those affidavits'" I happened to look up at the time and he said, "Mr. Martin could you make them?"

Q. Who said that?

A. Mr. Kelso said that. Judge Utz answered for me and said, "I don't think it is his place to make them." Then Mr. Sachs said, "Why not you make them Mr. Kelso?"

Mr. Kelso studied a few minutes and said "I could make it as to Mr. Connor but not as to Mr. Hester." Then they got some volumes of law and were discussing the law on the contempt proceedings.

Q. Who was talking about the law of the case?

A. Mr. Sachs.

Q. In the presence of Judge Utz and Mr. Kelso?

A. Yes sir.

Q. Then did you retire from the room?

A. I was called down stairs

Q. Was that all the conversation that you heard.

A. That is all yes sir.

Q. Did you hear any conversation at any other time on the part of Mr. D. A. Sachs in regard to the proceedings against Connor or Hester, or the Trust Company or Mr. Watts?

A. No sir, not Sachs.

Witness excused.

Charles D. Kelso recalled as a witness for the Government in rebuttal being duly sworn testified as follows:

Direct examination. Questions by Mr. LaFollette:

Q. Mr. Kelso you may state to the Court whether or not pending this controversy at New Albany Mr. Hester the attorney said to you that Mr. W. W. Watts was the man that Judge Anderson was after?

A. No sir, he did not.

Q. You may state whether you stated that he had so told you over at Sachs' office at Louisville.

A. I did not.

Cross-examination. By Mr. Fairleigh:

Q. If you said anything about that at all Mr. Kelso, will you state what you said?

A. I said to those gentlemen at Mr. Sachs' office that I had a talk with Mr. Hester on the car about this order and that I inferred that Judge Anderson was angry at Mr. Watts.

Witness excused.

Bertha L. Scott, a witness called on behalf of the Government in rebuttal being first duly sworn testified as follows:

Direct examination. Questions by Mr. LaFollette:

Q. Miss Scott you may state your name?

A. Bertha L. Scott.

Q. Where do you live?

A. New Albany, Indiana.

Q. Are you a stenographer?

A. Yes sir.

Q. Are you employed in the office of Mr. Charles D. Kelso?

A. I am.

Q. Were you employed in his office on the 19th, 20th and 21st of February last?

A. I was.

Q. Do you know Mr. W. W. Watts?

A. No sir.

Q. Do you know Mr. D. A. Sachs?

A. Yes sir.

Q. Was he at Mr. Kelso's office on Friday of that week and on Thursday?

A. On Friday, yes sir.

Q. He was there on Friday?

A. Yes sir.

Q. Do you remember whether he was there on Thursday?

A. I don't remember that he was.

Q You may tell the Court whether or not you as the stenographer in that office had dictated to you any orders or papers of any kind?

A. I did.

Q. You may state who gave you the dictation?

A. Mr. Kelso gave the dictations and Mr. Sachs offered suggestions.

By the Court:

Q. Mr. D. A. Sachs?

A. D. A. Sachs, yes sir.

By Mr. LaFollette:

Q. Have you examined this morning the copy of a pleading which begins: "Comes now the United States Tube Company by D. A. Sachs its attorney and respectfully represents to the Court," etc., and is signed "Respectfully submitted, United States Tube Company by D. A. Sachs, its attorney," and then has a jurat attached to it signed, "D. A. Sachs" and "Subscribed and sworn to before me this 20th day of February, 1903, Bertha L. Scott, Notary Public."

A. Yes sir.

Q. Hav you examined that?

A. Yes sir.

Q. And the orders immediately following that?

A. Yes sir.

Q. You may tell the Court whether or not that pleading on behalf of the United States Tube Company was dictated to you by Mr. C. D. Kelso in the presence of Mr. D. A. Sachs?

A. It was.

Q. You may state whether or not during the time that that was being dictated to you there was any suggestions or additional dictation made by Mr. D. A. Sachs?

A. There were suggestions.

By the Court:

Q. By whom?

A. By Mr. Sachs, D. A. Sachs.

By Mr. LaFollette:

Q. You may state whether you afterwards transcribed that in longhand?

A. I did.

Q. What did Mr. D. A. Sachs do in the way of reading it over?

A. I read it over to Mr. D. A. Sachs before I wrote it there on the typewriter.

Q. From your notes?

A. From my notes.

Q. Then after you transcribed it in long hand what did he do?

A. To the best of my recollection he read it over.

Q. State whether or not he signed it.

A. He signed it.

Q. State whether or not he swore to that before you.

A. He swore to it before me.

Q. You may state whether or not the orders that were made following that which begins: "And the application of said Receiver to be permitted to resign as such is now disallowed by the Judge of this Court for the reason that said Receiver in its said report and resignation openly and wilfully shows to the Court that it has violated the trust reposed in it by the Judge of this Court and has wrongfully, unlawfully and without the leave or permission of the Judge of said Court or said Court surrendered the possession of the property of which it is the custodian to Frederick D.Connor." State whether or not that order as it is copied in these pleadings was dictated to you on that same day?

A. To the best of my recollection it was.

Q. You may state to the Court what time in the day or what different parts of the day Mr. D. A. Sachs and Mr. Kelso made these dictations to you.

A. The dictations were made in the forenoon, I think near 12 o'clock, and I remained there until about one or half past one o'clock in the afternoon.

Q. You may state to the Court whether or not thi› dictation was made in the presence of Mr. D. A. Sachs.

A. What dictation?

Q. This one following the affidavit that he made? This subsequent dictation.

A. Yes sir.

Q. The orders that were made?

A. Yes sir.

Q. State whether or not he made suggestions and additions to that dictation, as to whether or not—

By Mr. Fairleigh: That question is objectionable. It is very leading.

By the Court:

Q. What if anything did he do with reference to making suggestions as to the orders that were made when they were dictated?

A. I can't say what suggestions that he made now but I know that he offered suggestions.

By Mr. LaFollette:

Q. You may state what other orders or writs or orders of any kind were made that afternoon if you can call to mind.

A. There were other orders made that afternoon.

Q. Can you remember of what character in substance?

A. I think that there was one in relation to the appointment of Mr. Kelso as Receiver and then there was a writ.

Q. You may explain that to the Court? What kind of a writ?

A. To the Sheriff.

Q. Do you remember in substance what that writ was to the Sheriff?

A. To take possession of the Zier property.

Q. You may state whether or not Mr. D. A. Sachs was present while that was being dictated to you.

A. Yes sir.

Q. What if anything did he do in connection with it while it was being dictated?

A. He heard it dictated.

Q. You may state whether or not you prepared that afterwards in longhand.

A. I did.

Q. To whom did you deliver them?

A. I just put them on Mr. Kelso's desk. I suppose he took them.

Q. About how late in the afternoon was it that the writ to the Sheriff was dictated to you.

A. It was at or near six o'clock.

Q. Mr. Sachs was there at the time it was dictated?

A. Yes sir.

Witness excused.

W. W. Watts, recalled, for the defendants, and examined by Mr. Smith, testified as follows:

Q. You heard Mr. Ruoff's statement in regard to meeting you and Mr. Sachs at the corner of Pearl and Spring Streets Saturday afternoon, about six o'clock on the 21st where he was standing waiting for a car? And you heard his statement in which he said Mr. Sachs said to him that he had been to the Zier plant and that he did not consider it worth more than $5000. Did this witness who testified meet you gentlemen there at that time?

A. I do not recall that he did and I don't think he did.

Q. Did he have any such conversation as he detailed in your presence or did Sachs make any such statement?

A. I think not.

Cross-examined by Mr. LaFollette:

Q. Were you with Mr. Sachs Saturday evening on the streets of New Albany?

A. I was at some time, but just at what time I do not remember.

Q. You were waiting for a car near that corner spoken of?

A. Yes sir, we were.

Q. And you and Mr. Sachs took a car at or near that point to go back to Louisville sometime Saturday evening?

A. Yes sir.

Both sides rested and this was all the evidence introduced before his Honor on this hearing.

(Petition of Receiver to Floyd Circuit Court. Introduced in evidence.)

IN THE FLOYD CIRCUIT COURT.

JANUARY TERM, 1903.

Jos. T. Ryerson & Son,
vs.
M. Zier & Company.

TO THE HONORABLE W. C. UTZ, *Judge of the Floyd Circuit Court:*

Frederick D. Connor, Receiver appointed by the United States District Court for the District of Indiana, intervening in the above entitled cause, respectfully shows to the Court:

That on the 11th day of February, 1903, by the consideration of the United States District Court for the District of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said Court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said Court.

That he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said Court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by The New Albany Trust

Company, heretofore appointed as receiver in this cause by this Court; a certified copy of the order of the United States District Court is filed herewith and attached hereto marked exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys and other effects of said M. Zier & Company now in its possession and control and to immediately file with this Court its account in writing, showing the amounts of money collected by it and now on hand.

The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
} *ss.*
County of Floyd. }

Frederick D. Connor, being duly sworn on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.
By William F. Ruoff,
Deputy.

UNITED STATES OF AMERICA, }
} *ss.*
District of Indiana. }

I, Noble C. Butler, clerk of the District Court of the United States within and for said District, do hereby certify that the above and foregoing are, first, a full, true and complete transcript of the record in the matter of M. Zier & Company, bankrupt; second, a full, true and complete transcript of the record in the case of the United States against Charles D. Kelso and others, as fully as the same appear upon the records and files now in my custody.

Witness my hand and the seal of said Court at Indianapolis in said District, this 17th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

[Seal.]